

FROM THE LAW  
APPLICABLE TO  
INDIAN NATIVE FORCES  
TO  
ARMY ACT, 1950



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## 27 GEORGII II. Cap. IX.

*An Act for punishing Mutiny and Desertion of Officers and Soldiers in the Service of the United Company of Merchants of England trading to the East-Indies; and for the Punishment of Offences committed in the East-Indies, or at the Island of Saint Helena.*

For further Powers to hold Courts-martial, see 1 Geo. 3. c. 14.

Every Officer or Soldier in the Company's Service, who, after Publication of this Act,

shall Mutiny, or Desert, &c.  
or list in any other Regiment, &c.

or shall be found sleeping on, or shall desert his Post, or correspond with the Enemy,

or shall strike, or not obey his superior Officer; shall suffer Death, or such Punishment as a Court-martial shall inflict.

The King may grant a Commission to hold Courts-martial, &c.

**W**HEREAS the United Company of Merchants of *England* trading to the *East-Indies*, are possessed of several principal Settlements in the *East-Indies*, and of several Settlements or Factories subordinate to such principal Settlements, and are also possessed of the Island of *Saint Helena*: And for the Safety and Protection of the said Settlements and Places, and for the better carrying on of their Trade to the Advantage of this Nation, the said United Company, at their own Costs and Charges, do maintain and keep a Military Force for the Garrison and Defence of the said Settlements, Factories, and Places; and it being requisite for the retaining of such Forces in their Duty, that an exact Discipline be observed, and that Soldiers who shall Mutiny, or stir up Sedition, or shall desert the said Company's Service, be brought to a more exemplary and speedy Punishment than the usual Forms of the Law do allow; be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the twenty-fifth Day of *March*, one thousand seven hundred and fifty-four, if any Person being mustered or in pay as an Officer, or who is or shall be listed, or in the said Company's pay as a Soldier in any of their Settlements, or in the said Island of *Saint Helena*, respectively, shall, at any Time after the Publication of this Act, in their principal Settlements, and in the said Island of *Saint Helena*, respectively, and within such Time as such Officer or Soldier shall have contracted and agreed to serve the said United Company, begin, excite, cause, or join in, any Mutiny or Sedition in the Company, Troop, or Regiment whereof he doth belong, or in any other Company, Troop, or Regiment in the said United Company's Service; or shall not use his utmost Endeavours to suppress the same, or coming to the Knowledge of any Mutiny, or intended Mutiny, shall not without Delay give Information thereof to his commanding Officer; or shall desert the said United Company's Service; or being a Soldier actually listed in any Regiment, Troop, or Company, shall list himself in any other Regiment, Troop, or Company, without a Discharge produced in Writing from the Officer commanding in chief the Regiment, Troop, or Company, in which he last served as a listed Soldier; or shall be found sleeping upon his Post, or shall leave it before relieved; or if any Officer or Soldier in the said United Company's Service shall, either upon Land, or upon the Sea, hold Correspondence with any Rebel to his Majesty, or with any Enemy of his Majesty, or of the said United Company; or give them Advice or Intelligence either by Letters, Messages, Signs, or Tokens, in any Manner or Way whatsoever; or shall treat with such Rebels or Enemies, or enter into any Condition with them without the Licence of the said United Company, or of the said United Company's President and Council, at any of their said principal Settlements, or of the said United Company's Governor and Council at *Saint Helena*, or without the Licence of the General, Lieutenant General, or Chief Commander of the said Company's Forces; or shall strike or use any violence against his superior Officer, being in the Execution of his Office; or shall disobey any lawful Command of his superior Officer; all and every Person and Persons so offending in any of the Matters before-mentioned shall suffer Death, or such other Punishment as by a Court-martial shall be inflicted.

II. And be it further enacted by the Authority aforesaid, That his Majesty may grant a Commission or Warrant under his Royal Sign Manual, unto the Court of Directors of the said United Company, who, by Virtue of such Commission or Warrant, shall have Power under the Seal of the said United Company to authorise and empower their President and Council for the Time being, at their said principal Settlements respectively, or the major Part of them, and their Governor and Council for the Time being at the said Island of *Saint Helena*, or the major Part of them, from Time to Time to appoint Courts-martial; and to authorise and empower the Commander in Chief of any Detachment of any of the Officers or Soldiers employed in the said Company's Service, to appoint Courts-martial for the Trial of any of the Officers or Soldiers under their respective Commands; in which Courts-martial all the Offences above-mentioned, and all other Offences herein-after specified, shall be tried and proceeded against in such Manner as by this Act shall be hereafter directed.

III. Pro-

III. Provided always, and be it enacted, That when and so long as any of his Majesty's Forces shall be employed to act in defence of any of the said Company's Settlements, or to assist against any of their Enemies in the *East-Indies*, the Power of appointing Courts-martial, or authorising such Appointment as aforesaid, shall be in the Commander in Chief of such his Majesty's Forces for the Time being, over such of the said Company's Officers and Soldiers as shall belong to the principal Settlement where or from whence such Forces shall be employed.

The Commander in Chief to appoint Courts-martial.

IV. And be it also further enacted, That it shall and may be lawful to and for such Courts-martial, by their Sentence or Judgment, to inflict corporal Punishment on any Soldier for Immoralities, Misbehaviour, or neglect of Duty.

Immoralities, or neglect of Duty, punishable by Courts-martial.

V. And it is hereby further enacted, That no general Court-martial which shall have Power to sit by Virtue of this Act, or by any Authority from the Commander in Chief of his Majesty's Forces, or by Appointment of the President and Council of any of the said United Company's principal Settlements, or the major Part of them, shall consist of a less Number than nine; whereof none to be under the degree of a Commission Officer; and the President of such general Courts-martial shall neither be the Commander in Chief, or Governor of the Garrison where the Offender shall be tried, nor under the Degree of a Captain; and that no general Court-martial, which shall have Power to sit by Virtue of this Act, by Appointment from the Governor and Council of *Saint Helena*, or the major Part of them, shall consist of a less Number than five, whereof none to be under the Degree of a commissioned Officer; and the President of such general Court-martial shall neither be the Commander in Chief, or Governor of the Garrison where the Offender shall be tried, nor under the Degree of a Lieutenant; and that such Courts-martial shall have Power and Authority, and are hereby required to take and administer such Oaths, and to proceed in such Manner as his Majesty shall from Time to Time think fit to order and direct, by any Rules or Orders under his Royal Sign Manual; and no Sentence of Death shall be given against any Offender in such Case by any general Court-martial, unless two-thirds of the Officers present shall concur therein; and no Proceeding or Trial shall be had upon any Offence, but between the Hours of eight of the Clock in the Morning and three in the Afternoon, except in Cases which require an immediate example.

General Courts-martial not to consist of a less Number than nine.

President of the Court.

General Court-martial at *Saint Helena*,

not to consist of less than five.

President of such Court.

Courts-martial may administer Oaths.

Two-thirds of the Officers present to concur in all Sentences of Death.

VI. Provided always, and it is hereby enacted by the Authority aforesaid, That every Judge Advocate, or Person officiating as such at any general Court-martial, do, and he is hereby required to transmit, with as much Expedition as the Opportunity of Time and Distance of Place can admit, the original Proceedings and Sentence of such Court-martial to his Majesty's Commander in Chief for the Time being, in case such Court-martial shall be held by Virtue of his Warrant or Authority as aforesaid, or to the President and Council of such of the said United Company's principal Settlements, by Virtue of whose Warrant or Authority the same shall be held; or unto the Governor and Council at *Saint Helena*, if the same shall be held within their Jurisdiction; which said original Proceedings and Sentence shall be carefully kept and preserved by such Commander in Chief, or by such President and Council, or Governor and Council respectively; to the End that the Persons intitled thereto may be enabled, upon Application to them, to obtain Copies thereof according to the true Intent and Meaning of this Act.

Judge Advocate to transmit to the Commander in Chief, &c. the original Proceedings.

VII. Provided also, and it is hereby declared and enacted, That no Officer or Soldier being acquitted or convicted of any Offence, be liable to be tried a second Time by the same or any other Court-martial for the same Offence; and that no Sentence given by any Court-martial, and signed by the President thereof, be liable to be revised more than once.

No Person to be tried a second Time for the same Offence. Sentence not liable to be revised more than once.

VIII. Provided always, and be it enacted, That it shall and may be lawful to and for his Majesty to form, make, and establish Articles of War, for the better Government of the said United Company's Forces, and for bringing Offenders against the same to Justice; and to erect and constitute Courts-martial, with Power to try, hear, and determine any Crimes or Offences by such Articles of War, and inflict Penalties by Sentence or Judgment of the same, as well within the said United Company's Limits of Trade, as in the said Island of *Saint Helena*.

The King may make Articles of War.

IX. Provided always, That no Person or Persons shall be adjudged to suffer any Punishment extending to Life or Limb, by the said Articles, in Time of Peace, except for such Crimes as are expressed to be so punishable by this Act.

No Punishment to extend to Life or Limb in Peace, except by this Act.

X. Provided also, That no Person or Persons being acquitted or convicted of any capital Crimes, Violences, or Offences, by the civil Magistrate, shall be liable to be punished by a Court-martial for the same, otherwise than by cashiering.

Capital Crimes cognizable by the civil Magistrate punishable by cashiering.

G g

XI. Pro-



Offenders against the  
Laws to be delivered  
up to the civil Magis-  
trate.

Officers neglecting to  
deliver up such  
Offenders,

disabled to hold any  
Military Office.

Conviction thereof to  
be affirmed at the  
Quarter Sessions, and  
a Certificate trans-  
mitted to the Presi-  
dent and Council.

Persons employed in  
the trains of Artillery  
included.

Offences committed  
by the Company's  
Presidents, Council,  
or Governors,

may be enquired of in  
the Court of King's  
Bench, or before  
Commissioners ap-  
pointed by Ma-  
jesty in England.

Further provided for

1 Geo. 3. c. 14 ;  
10 Geo. 3. c. 47 ;  
13 Geo. 3. c. 63. ;  
24 Geo. 3. c. 25. ; and  
26 Geo. 3. c. 37.

XI. *Provided also, That if any Officer, Non-commission Officer, or Soldier, shall be accused of any capital Crime, or of any Violence or Offence against the Person, Estate, or Property of any of his Majesty's Subjects, which is punishable by the known Laws of the Land, the Commanding Officer or Officers of every Regiment, Troop, Company, or Party, is and are hereby required to use his utmost Endeavours to deliver over such accused Person to the civil Magistrate, and shall also be aiding and assisting to the Officers of Justice in the seizing and apprehending such Offender, in order to bring him to trial : And if any such commanding Officer shall wilfully neglect or refuse, upon Application made to him for that Purpose, to deliver over any such accused Person to the civil Magistrate, or to be aiding and assisting to the Officers of Justice in apprehending such Offender; every such Officer so offending, and being thereof convicted before two or more Justices of the Peace for the Settlement or Place where the Fact is committed, by the Oath of two credible Witnesses, shall be cashiered, and shall be utterly disabled to have or hold any Military Office or Employment in the said United Company's Service in the East-Indies; provided the said Conviction be affirmed at the next Quarter Sessions of the Peace for the said Settlement or Place, and a Certificate thereof be transmitted to the President and Council of such principal Settlement, who are hereby obliged to certify the same to the next Court-martial.*

XII. And whereas it may otherwise be doubted whether the Officers and Persons employed in the several Trains of Artillery be within the Intent and Meaning of this Act; it is hereby enacted by the Authority aforesaid, That the Officers and Persons employed, or that shall be employed in any of the Trains of Artillery, be deemed in all Respects whatsoever within the Intent and Meaning of this Act.

XIII. And be it further enacted by the Authority aforesaid, That if any of the said United Company's Presidents or Council, at their respective principal Settlements, or any of them, or their Governor or Council at the said Island of *Saint Helena*, shall, after the said twenty-fifth Day of *March*, one thousand seven hundred and fifty-four, be guilty of Oppressing any of his Majesty's Subjects beyond the Seas, within their respective Jurisdictions or Commands, or shall be guilty of any other Crime or Offence contrary to the Laws of that Part of *Great Britain* called *England*, or in Force within their respective Jurisdictions or Commands; such Oppression, Crimes, and Offences, may be enquired of, heard, and determined in his Majesty's Court of King's Bench, within that Part of *Great-Britain* called *England*; or before such Commissioners, and in such County of that Part of *Great-Britain* called *England*, as shall be assigned by his Majesty's Commission, and by good and lawful Men of the same County; and such Punishment shall be inflicted on such Offenders, as are usually inflicted for Offences of the like Nature committed in that Part of *Great-Britain* called *England*.

Anno primo

## GEORGII III. Regis.

## CAP. XIV.

*An Act to extend the Provisions relating to the holding of Courts-Martial, and to the Punishment of Offences committed in the East-Indies, contained in the Act made in the Twenty-seventh Year of his late Majesty's Reign, intituled, An Act for punishing Mutiny and Desertion of Officers and Soldiers in the Service of the United Company of Merchants of England trading to the East-Indies; and for the Punishment of Offences committed in the East-Indies, or at the Island of Saint Helena; to the said Company's Settlement of Fort Marlborough, and to such other principal Settlements, wherein the said Company may be hereafter impowered to hold Courts of Judicature.*

Preamble reciting the  
Act 27 Geo. 2. c. 9.

WHEREAS by an Act of Parliament passed in the twenty-seventh Year of the Reign of his late Majesty King George the Second, intituled, *An Act for punishing Mutiny and Desertion of Officers and Soldiers in the Service of the United Company of Merchants of England trading to the East-Indies; and for the Punishment of Offences committed in the East-Indies, or at the Island of Saint Helena*, it was, amongst other Things, enacted, That his Majesty might grant a Commission or Warrant, under his Royal Sign Manual, unto the Court of Directors of the said United Company, who, by Virtue of such Commission or Warrant, should have Power, under the Seal of the said United Company, to authorise and impower their President and Council for the Time being, at their principal Settlements respectively, or the major Part of them, and their Governor and Council, for the Time being, at the said Island of *Saint Helena*, or the major Part of them, from Time to Time, to appoint Courts-Martial, and to authorise and impower the Commander in Chief of any Detachment of any of the Officers or Soldiers employed in the said Company's Service, to appoint Courts-Martial for the Trial of any of the Officers or Soldiers under their respective Commands, in which Courts-Martial the Offences in the said Act mentioned should be tried and proceeded against in such Manner as by the said Act is directed; and it is by the said Act provided and enacted, That it should be lawful for his Majesty to form, make, and establish, Articles of War for the better Government of the said United Company's Forces, and for bringing Offenders against the same to Justice, and for other Purposes in the said Act mentioned: And whereas, after the passing of the said Act, and pursuant to the Powers therein, his said late Majesty was graciously pleased to grant a Commission or Warrant, under his Royal Sign Manual, for the Purposes in the said Act expressed, and also to form, make, and establish, certain Rules and Articles of War for the better Government of the Officers and Soldiers in the Service of the said United Company: And whereas his present Majesty hath been lately graciously pleased to grant to the said Company his Royal Charter for erecting and holding, at the said Company's Settlement of *Fort Marlborough* near *Bencoolen*, on the West-coast of the Island of *Sumatra* in the *East-Indies*, Courts of Judicature, as well for civil as criminal Causes, and for other Purposes in the said Charter mentioned and expressed: And whereas it will be greatly to the Advantage of the said United Company, that their Presidents and Council for the Time being, at their said Settlement of *Fort Marlborough*, and also at any other principal Settlement the said Company may hereafter be possessed of, and wherein the said Company shall be authorised to hold Courts of Judicature as herein-after mentioned, should be impowered to appoint and hold Courts-Martial, under the like Powers and Authorities, and in like Manner, as the same may be appointed and held under the said Act at the said Company's other principal Settlements in the said Act mentioned; be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That his Majesty, his Heirs or Successors, may, at any Time or Times hereafter, grant a Commission or Warrant, Commissions or Warrants, under his or their roval Sign Manual, unto the Court of Directors of the said United Company for the Time being, who, by Virtue of any such Commission or Warrant, shall have Power, under the Seal of the said United Company, to authorise and impower their Governor and Council for the Time being, at their said principal Settlement of *Fort Marlborough*, or the major Part of them, and their Governor and Council for the Time

His Majesty may authorise the Court of Directors to impower the Governor and Council of their principal Settlement at *Fort Marlborough*, or elsewhere where

Time being, at every or any other principal Settlement which the said United Company shall, at any Time or Times hereafter have, or be possessed of, within the Limits of Trade granted to the said Company, and wherein the holding of Courts of Judicature shall be authorised by any Charter or Letters Patent to be hereafter granted by his Majesty, his Heirs or Successors, from Time to Time, to appoint Courts-Martial; and to authorise and empower the Commander in Chief of any Detachment of Officers or Soldiers employed in the said Company's Service, to appoint Courts-Martial for the Trial of any of the Officers or Soldiers under their respective Commands; in which Courts-Martial all the Crimes and Offences mentioned and specified in the said in Part recited Act, or in the said Rules and Articles of War already made, or in any other Rules and Articles of War to be hereafter made, Pursuant to the Powers given by the said recited Act, committed within the said principal Settlement of *Fort Marlborough*, or the Districts thereof, or within any such other principal Settlement as aforesaid, shall and may be tried and proceeded against; and the Sentences or Judgments passed upon such Offenders, executed in such and the like Manner, and with the like Powers and Authorities, under and subject to such and the like Restrictions and Regulations, and by the same Means, Methods and Proceedings, Manner and Form, as such or the like Offences committed in any of the said Company's principal Settlements in the said Act mentioned, may or can be tried and proceeded against by Virtue of the said Act and Articles of War, or either of them.

Courts of Judicature shall be authorised to appoint Courts-Martial for Trial of Offences.

II. And be it further enacted by the Authority aforesaid, That if any of the said United Company's Presidents, or Council, at their said Settlement of *Fort Marlborough*, or at any other Principal Settlement, wherein the said Company may be hereafter empowered to hold Courts of Judicature, shall be guilty of oppressing any of his Majesty's Subjects beyond the Seas, within their respective Jurisdictions or Commands, or shall be guilty of any other Crime or Offence contrary to the Laws of that Part of *Great-Britain* called *England*, or in Force within their respective Jurisdictions or Commands, such Oppression, Crimes, and Offences, may be enquired of, heard, and determined, in his Majesty's Court of King's Bench, within that Part of *Great-Britain* called *England*, or before such Commissioners, and in such County of that Part of *Great-Britain* called *England*, as shall be assigned by his Majesty's Commission, and by good and lawful Men of the same County; and such Punishment shall be inflicted on such Offenders, as are usually inflicted for Offences of the like Nature committed in that Part of *Great-Britain* called *England*.

Oppressions, and other illegal Acts committed by the Presidents or Council, may be enquired into and punished by the Court of King's Bench, &c. in England. See further Provisions for Punishment of Offences committed in India in 10 Geo. 3.

c. 47. 13. G. 3. c. 61  
24 G. 3. c. 25. and 26  
G. 3. c. 57.

## 50 GEORGH III. Cap. i, vii.

until the Twenty-fifth Day of *March* One thousand eight hundred and ten; be it further enacted, That the said several Duties on Sugar, Malt, Tobacco, and Snuff, and the said Acts granting and continuing the same, and all the Provisions thereof, shall be and the same are hereby severally and respectively further continued from and after the Expiration of the Time limited as aforesaid, until the Twenty-fifth Day of *March* One thousand eight hundred and eleven, and all Monies arising thereby which shall be paid into the said Receipt of the Exchequer, shall be entered separate and distinct from all other Monies paid and payable to His Majesty.

• The Duties continued by the above Act have been subsequently continued to the 25th March 1817, by the undermentioned Acts, which it is unnecessary to insert in this Collection; viz.

51 Geo. III. Cap. 2, Section 38.

52 Geo. III. — 1, — 39.

53 Geo. III. — 15, — 39.

54 Geo. III. Cap. 2, Section 39.

55 Geo. III. — 3, — 39.

56 Geo. III. — 3, — 39.

## 50 GEORGH III. Cap. VII.

*An Act for punishing Mutiny and Desertion; and for the better Payment of the Army and their Quarters.* [21st March 1810.]

General Court-martial to consist of not less than 13 Members, except in Africa, &c.

XVIII. PROVIDED always, and be it further enacted, That no General Court-martial for the Trial of any Officer (except in *Africa* or *New South Wales*) shall consist of less than Thirteen Members.

*The above Provision has been renewed by the undermentioned Acts; viz.*

51 Geo. III. Cap. 8, Section 19.

52 Geo. III. Cap. 22, Section 19.

Officers of the King's Forces and Officers in the East India Company's Service may sit in Conjunction at Courts-martial, &c.

XXVI. And whereas it may also be expedient, when any of His Majesty's Land Forces are employed in the *East Indies*, that Officers in the Service of the United Company of Merchants of *England* trading to the *East Indies* should, in certain Cases, be associated with Officers of His Majesty's Land Forces, for the Purpose of holding Courts-martial; be it enacted and declared, That when and as often as there may be Occasion, it shall and may be lawful for Officers of His Majesty's Land Forces, and of the Forces in the Service of the United Company of Merchants of *England* trading to the *East Indies*, to sit in Conjunction at Courts-martial, and to proceed in the Trial of any Officer or Soldier, in like Manner, to all Intents and Purposes, as if such Courts-martial were composed of Officers of His Majesty's Land Forces, or of Officers in the Service of the said United Company only; with this Distinction, that, upon the Trial of any Officer or Soldier of His Majesty's Land Forces, Regard shall be had to the Regulations and Provisions made by or in pursuance of this Act; and the Oaths administered to the several Members of the Court-martial shall be in the Terms by this Act prescribed; and upon the Trial of any Officer or Soldier in the Service of the said United Company, Regard shall be had to the Regulations and Provisions made by or in pursuance of an Act passed in the Twenty-seventh Year of the Reign of His late Majesty King *George* the Second, intituled, "An Act for punishing Mutiny and Desertion of Officers and Soldiers in the Service of the United Company of Merchants of *England* trading to the *East Indies*; and for the Punishment of Offences committed in the *East Indies*, or at the Island of *Saint Helena*;" and the Oaths administered to the several Members of the Court-martial shall be in the Terms prescribed by the same Act.

*The above Provision has been annually renewed by the undermentioned Acts; viz.*

51 Geo. III. Cap. 8, Section 27.

52 Geo. III. — 22, — 29.

53 Geo. III. — 17, — 30.

54 Geo. III. Cap. 25, Section 31.

55 Geo. III. — 20, — 31.

55 Geo. III. — 108, — 31.

56 Geo. III. Cap. 10, Section 31.



LXXIV. Provided nevertheless, and it is hereby enacted and declared by the Authority aforesaid, That from and after the said Twenty-fourth Day of *March* One thousand eight hundred and ten, when and as often as any Person or Persons shall be enlisted as a Soldier or Soldiers in His Majesty's Land Service, he or they shall, within Four Days, but not sooner than Twenty-four Hours, after such enlisting respectively, be carried or go with some Officer, Non-commissioned Officer, or Private Soldier belonging to the Recruiting Party by which he shall be enlisted, or with the Person employed on the Recruiting Service with whom he shall have enlisted, before some Justice of the Peace of any County, Riding, City, or Place, or Chief Magistrate of any City or Town Corporate, residing or being next to, or in the Vicinity of the Place and acting for the Division or District where such Person or Persons shall have been enlisted, and not being an Officer in the Army, and before such Justice or Chief Magistrate he or they shall be at Liberty to declare his or their Dissent to such Inlisting; and upon such Declaration, and returning the Inlisting Money, and also each Person so dissenting paying the sum of Twenty Shillings for the Charges expended or laid out upon him, together with such full Rate allowed by Law for the Subsistence or Diet and Small Beer furnished to such Recruit subsequent to the Period of his having been enlisted, such Person or Persons so inlisting shall be forthwith discharged and set at Liberty, in the Presence of such Justice or Chief Magistrate; but if such Person or Persons shall refuse or neglect, within the Space of Twenty-four Hours, to return and pay such Money as aforesaid, he or they shall be deemed and taken to be enlisted, as if he or they had given his or their Assent thereto before the said Justice or Chief Magistrate; and if such Person or Persons shall declare his or their having voluntarily enlisted himself or themselves, then such Justice or Chief Magistrate shall, and he is hereby required forthwith to read over, or in his own Presence to cause to be read over, to such Person or Persons the Third and Fourth Articles of the Second Section, and the First Article of the Sixth Section of the Articles of War against Mutiny and Desertion, and to tender and administer to such Person or Persons respectively, not only the Oath of Fidelity mentioned in the said Articles of War, but also the Oath mentioned in the Schedule to this Act annexed, marked (A), or if the Person shall be desirous of inlisting without any Limitation of Period of Service, the Oath in the Schedule to this Act annexed, marked (B); and if such Person or Persons shall take the said Oaths, then such Justice or Chief Magistrate shall, and he is hereby required forthwith to certify under his Hand the inlisting and swearing, together with the Place of the Birth, Age, and Calling, if known, of such Person or Persons, in the Form mentioned in the Schedule to this Act annexed, marked (C.), if the Oath in the Form marked (A.) shall have been taken, and in the Form marked (D.) if the Oath in the Form marked (B.) shall have been taken, except in the Case of Recruits enlisted to serve either in His Majesty's Troops, or in the Forces of the *East-India Company*, according as His Majesty shall think fit, in pursuance of an Act passed in the Thirty-ninth Year of the Reign of His Majesty, intituled, "An Act for better recruiting the Forces of the *East-India Company*," in which Case every such Recruit shall, instead of the said Oath of Fidelity, and of the Oath contained in the Schedule (A.) or (B.) to this Act annexed, take the Oath of Allegiance directed by the said Act of the Thirty-ninth of His Majesty, and contained in the Schedule to this Act annexed, marked (E.); and the Justice or Chief Magistrate shall certify such Inlisting and Swearing accordingly in the Form mentioned in the Schedule to this Act annexed, marked (F.); and if any such Person or Persons, so to be certified, shall wilfully refuse to take the said Oath of Fidelity before the said Justice or Chief Magistrate, it shall and may be lawful for such Officer, from whom he has received such Money as aforesaid, to detain and confine such Person or Persons until he or they shall take the said Oath of Fidelity; and every Military Officer that shall act contrary hereto, or offend herein, shall incur the like Penalty and Forfeiture as is by this Act inflicted upon any Officer for making a false and untrue Muster; and the Penalty and Forfeiture shall be levied and recovered in the same Manner as any Penalties or Forfeitures are by this Act to be levied or recovered: Provided always, that every Non-commissioned Officer or Private Soldier who shall enlist any Recruit, shall at the Time of such inlisting enquire the Christian and Surname and Place of Abode of such Recruit, and either take the same down in Writing, or give the same to the Non-commissioned Officer commanding the Recruiting Party to be so taken down: Provided also, that it shall be lawful for any Justice of the Peace to discharge any Person who shall have hastily enlisted, and who shall apply to him to declare his Dissent within such Four Days as aforesaid, upon Payment of the Sum of Money required to be paid by any Recruit declaring his Dissent under this Act notwithstanding no Officer, Non-commissioned Officer, or Private Soldier belonging to the Recruiting Party shall be with the Recruit, if it shall appear to such Magistrate upon the Examination of such Recruit or of any other Person that the Recruiting Party has left the Place where such Recruit was enlisted, or that such Recruit could not procure any Non-commissioned Officer belonging to such Party to go with such Recruit before the Justice of the Peace; and the Sum paid by such Recruit upon his Discharge shall be kept by the Justice of the Peace, and paid when demanded to any Person belonging to the Recruiting Party entitled thereto demanding the same.

Clause for Relief of Persons hastily inlisting themselves. Such Persons not paying the Inlisting and Subsistence Money within the limited Time to be deemed to be enlisted; in which Case, or if they enlist, the Justices to read over to them certain Sections of the Articles of War, and administer certain Oaths.

Recruits enlisted under 39 G. 3. c. 109. for the *East-India Company's Service*, &c. shall take the Oath of Allegiance.

Name and Residence of Recruits to be taken down.

Justices may discharge Persons hastily inlisting themselves, on paying the inlisting Money.

Troops raised or serving in any of His Majesty's Provinces, &c. acting in Conjunction with His Majesty's other Forces, liable to the same Martial Laws.

CXI. And whereas great Mischief and Inconvenience may arise if it should be doubted whether Troops in Pay, raised or serving in any of His Majesty's Provinces, Governments, Colonies, or Dominions, or in Countries, Colonies, or Places in Possession of or occupied by His Majesty's Subjects, or any Forces of His Majesty, are while under the Command of any Officer having a Commission immediately from His Majesty, liable to the same Rules and Articles of War, and the same Penalties and Punishments, as His Majesty's other Forces are subject to: To prevent such Mischief, and to remove all Doubts, be it declared and enacted by the Authority aforesaid, That all Officers and Soldiers of any Troops, being mustered and in Pay, which have been or are or shall be raised or serving as aforesaid, shall at all Times and in all Places be liable to Martial Law, and Discipline, in like Manner, to all Intents and Purposes, as His Majesty's other Forces are, and shall be subject to the same Trial, Penalties, and Punishments.

*This last Provision has been annually renewed by the undermentioned Acts; viz.*

51 Geo. III. Cap. 8, Section 112.	54 Geo. III. Cap. 25, Section 131.
52 Geo. III. — 22, — 117.	55 Geo. III. — 20, — 131.
53 Geo. III. — 17, — 127.	55 Geo. III. — 108, — 136.
56 Geo. III. Cap. 10, Section 137.	

*Schedules A, B, C, D, are omitted.*

### SCHEDULE (E).

*Oath of Allegiance, 39 Geo. III. c. 109.*

I *A. B.* being enlisted to serve, either in His Majesty's Troops, or in the Forces of the *East India* Company, according as His Majesty shall think fit, do swear, That I will bear true Allegiance to our Sovereign Lord King *George*, and that I will, as in my Duty bound, defend him in His Person, Crown, and Dignity, against all His Enemies; and that so long as I shall remain in His Majesty's Service, I will duly observe and obey His Majesty's Orders and the Orders of the Generals and Officers set over me by His Majesty; and that if His Majesty shall please to appoint me to serve in the Forces of the United Company of Merchants of *England* trading to the *East Indies*, then I swear that I will also be true to the said United Company, and will duly observe and obey all their Orders, and the Orders of their Generals and Officers who shall be lawfully set over me.

### SCHEDULE (F).

To wit. } I ——— One of His Majesty's Justices of the Peace of ——— certify,  
That ——— aged ——— Years ——— Feet ——— Inches high, ———  
Complexion, ——— Eyes, ——— Hair, came before me at ——— on the ——— Day of  
——— One thousand eight hundred and ——— and acknowledged that he had voluntarily enlisted himself for the Bounty of ——— to serve either in His Majesty's Army or in the Forces of the *East India* Company, according as His Majesty shall think fit to order. And I further certify, That, in my Presence, the Third and Fourth Articles of the Second Section, and the First Article of the Sixth Section of the Articles of War, against Mutiny and Desertion, were read over to him; and he took the Oath of Allegiance prescribed by the Act of 39 *Geo.* c. 109. to be taken instead of the Oath of Fidelity mentioned in the said Articles of War, and also the Oath above set forth; and that he ——— received the Sum of ——— on being attested.

may be hired by private Contract to bring Home Cargoes.

without advertising, any Ship or Ships engaged in His Majesty's Transport or other Service to carry Convicts, or Stores to *New South Wales*, the *Cape of Good Hope*, or *Ceylon*, for the Purpose of bringing Home Cargoes from *China* or *India*, at such Rate of Freight and Demurrage as they shall judge to be reasonable, so as no such Ship shall be hired or taken up for more than One Voyage.

## 50 GEORGII III. Cap. LXXXVII.

*An Act to amend Two Acts, relating to the raising Men for the Service of the East India Company, and the Quartering and Billetting such Men; and to Trials by Regimental Courts Martial.* [15th June 1810.]

39 Geo. 3. c. 109.

27 G. 2. c. 9.

His Majesty may order any of His Officers to enlist the Number of Men specified in recited Act of 39 G. 3. c. 109. to serve in the Company's Forces in India for Life or a limited Time.

Oaths to be taken as in Schedule.

Soldiers to be subject to the Mutiny Act till their Embarkation, then to be subject to the recited Act of 27 G. 2. c. 9.

Powers of Acts relating to quartering, &c. to extend to this Act.

WHEREAS an Act passed in the Thirty-ninth Year of the Reign of His present Majesty, intituled, "An Act for the better recruiting the Forces of the *East India Company*:" And whereas an Act passed in the Twenty-seventh Year of the Reign of His late Majesty King *George the Second*, intituled, "An Act for punishing Mutiny and Desertion of Officers and Soldiers in the Service of the United Company of Merchants of *England* trading to the *East Indies*, and for the Punishment of Offences committed in the *East Indies* or at the Island of *Saint Helena*:" And whereas it would tend to the more speedy recruiting of the Forces of the *East India Company*, if Men were permitted to enlist for a limited Time in the Service of the said Company, without engaging to serve in His Majesty's Forces; and Provision must in such Case be made for Quartering and Billetting the Men so raised: And whereas it is also expedient that the Provisions of the said recited Act of His late Majesty King *George the Second*, as to Trials by Regimental Courts Martial, should be amended in relation to the Members and Witnesses being sworn, as now required on such Trials in His Majesty's Regular Forces; be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall be lawful for His Majesty, His Heirs and Successors, to order and cause such of His Officers as He shall see fit, to levy, enlist, and raise such Number of Men, either for Life or limited Service, as His Majesty shall from Time to Time think fit, not exceeding the Number of Men specified in the said recited Act of the Thirty-ninth Year of the Reign of His present Majesty aforesaid, for the special Purpose of serving in the *East Indies* in the Forces of the said United Company only; and the Recruits to be raised for such special Purpose, instead of taking the Oath of Fidelity appointed to be taken by the said recited Act of the Thirty-ninth Year aforesaid, or by any Act in force for the Punishment of Mutiny and Desertion, shall take the Oath specified in the Schedule to this Act annexed, marked (A.); and instead of the Oath of Service prescribed by any Act in force for the punishing of Mutiny and Desertion, shall take the Oath in the Schedule to this Act annexed, marked (B.); which Oaths shall be administered by all Justices of the Peace and Magistrates before whom any such Recruits shall be carried for the Purpose of being attested; and the Certificate given upon such Attestation, shall be in the Form in the Schedule to this Act annexed, marked (C.).

II. And be it further enacted, That all Soldiers enlisted into the Service of the said United Company of Merchants, shall be trained and disciplined and subject to such Command and Regulations, and at all Times and until their Embarkation be subject to all the Provisions of any Act in force for the Punishment of Mutiny and Desertion, and the better Payment of the Army and their Quarters, and after their Embarkation, to the Provisions of the said recited Act of the Twenty-seventh Year aforesaid, in like Manner as is prescribed in the said recited Act of the Thirty-ninth Year aforesaid; and all the Powers, Authorities, Provisions, Clauses, Rules, Regulations, and Restrictions, Penalties, and Forfeitures, contained and prescribed in the said recited Act of the Thirty-ninth Year aforesaid, shall extend and be in full force as to all Soldiers enlisted under and after the passing of this Act into the Service of the said United Company of Merchants, as fully and effectually, as if the same were severally and respectively repeated and re-enacted in this Act and made Part thereof.

III. And be it further enacted, That all the Powers, Authorities, Provisions, Clauses, Rules, Regulations, and Restrictions, and Penalties, and Forfeitures, contained and prescribed in any Act or Acts of Parliament in Force for the Time being, in relation to the quartering and billeting and provisioning of, and Allowances in respect of such quartering and billeting of Soldiers and Officers in His Majesty's Service, and to the providing of Carriages for the Use of Soldiers, shall, from and after the passing of this Act, extend to all Soldiers enlisted for or transferred into the Service of the said United Company of Merchants, as fully and effectually as if the same were severally and separately

rately repeated and re-enacted in this Act, and made Part thereof; any Thing in the said Act of the Thirty-ninth Year aforesaid, or any other Act or Acts of Parliament to the contrary notwithstanding.

IV. And whereas it is expedient to allow Men to enlist in the Service of the said United Company for Twelve Years; be it therefore enacted, That it shall be lawful for any Person enlisting for limited Service in the Service of the said United Company, to enlist for Twelve Years, if at the Time of such enlisting he shall be of the Age of Eighteen Years and upwards, and if he shall be under Eighteen Years of Age, then for such further Period beyond Twelve Years as shall be equal to the Difference between Eighteen Years and the Age of the Person so enlisting. Men may enlist for 12 Years, &c.

V. Provided always, and be it further enacted, That it shall be lawful for all Persons who shall have been enlisted for limited Service in the Forces of the said United Company, after the Expiration of the first Period for which they shall have been severally enlisted, to re-enlist for such further Period as shall be allowed and appointed by any Order of the Governor General in Council in Bengal. After the Expiration of the first Period the Men may re-enlist.

VI. And be it further enacted, That it shall be lawful for any Person ballotted or enrolled to serve or serving in the Local Militia, to enlist or enter into the Service of the United Company of Merchants trading to the *East Indies*, in like Manner and at such Times as any such Person might or may enlist or enter into His Majesty's Regular Forces. Men serving in the Local Militia may enlist.

VII. And be it further enacted, That all Regimental and Garrison and other Courts Martial which shall be held for the Trial of any Offences committed by the Troops in the Service of the said United Company, shall have full Power and are hereby authorized and required to take and administer such Oaths, and to proceed in such Manner in the Trial of Offences, as His Majesty shall from Time to Time think fit to order and direct. His Majesty may direct the Manner of Trials by Courts Martial.

### *Schedules to which this Act refers.*

#### SCHEDULE A.

I *A. B.* being enlisted to serve in the [Infantry or Artillery, as the Case may be] of the *East India* Company, do swear, That I will bear true Allegiance to our Sovereign Lord King *George*, and that I will as in Duty bound defend him in His Person, Crown, and Dignity, against all His Enemies; and I swear, that I will also be true to the said United Company, and will duly observe and obey all their Orders, and the Orders of their Generals and Officers who shall be lawfully set over me.

#### SCHEDULE B.

I *A. B.* do make Oath, That I am [or, have been, as the Case may be] [state Occupation, if any, or state if none] and to the best of my Knowledge and Belief was born in, [state County, Parish, or Place, &c.] and that I am of the Age of ——— Years; that I do not belong to the Militia or to any Regiment in His Majesty's Service, or to His Majesty's Navy or Marines; and that I will serve the United Company of Merchants of *England* trading to the *East Indies* until I shall be duly and legally discharged, [or, if the Recruit enlists for limited Service, then leave out the Words scored unuer, and insert] for the Period of Twelve Years [if the Person enlisting is of the Age of Eighteen Years or upwards, but if under Eighteen Years, then the Difference between his Age and Eighteen to be added to such Twelve Years, as the Case may be, and such Period to be inserted instead of Twelve Years] provided the said United Company should for so long require my Service.

#### SCHEDULE C.

I ——— One of His Majesty's Justices of the Peace of ——— [or, Chief Magistrate of ———] Do hereby certify That ——— appeared to be ——— Years old, ——— Feet ——— Inches high, ——— Complexion, ——— Eyes, ——— Hair, came before me at ———

at — on the — Day of — and stated himself to be of the Age of — Years, and that he had no Rupture, and was not troubled with Fits, and was no ways disabled, by Lameness, Deafness, or otherwise, but had the perfect Use of his Limbs and Hearing, and was not an Apprentice, and acknowledged that he had voluntarily enlisted himself for the Bounty of — to serve the United Company of Merchants of *England* trading to the *East Indies*, and did engage to serve for the Period of — [this Blank to be filled up by the Magistrate, either until discharged, or for Years, as in the preceding Form of enlisting]; and I do hereby certify, That in my Presence the Third and Fourth Articles of the Second Section and First Article of the Sixth Section of the Articles of War against Mutiny and Desertion were read over to him, and he took the Oath of Fidelity mentioned in the Act of the Fiftieth Year of His present Majesty, and also the Oath above set forth; and that he received the Sum of — on being attested; and that I have given to the said — a Duplicate of this Certificate signed with my Name.

## 50 GEORGII III. Cap. XCVII.

*An Act to continue until the Fifth Day of July One thousand eight hundred and eleven, and to amend several Acts for granting certain Rates and Duties, and for allowing certain Drawbacks and Bounties on Goods, Wares, and Merchandize imported into and exported from Ireland; and to grant to His Majesty until the said Fifth Day of July One thousand eight hundred and eleven, certain new and additional Duties on the Importation and to allow Drawbacks on the Exportation of certain Goods, Wares, and Merchandize into and from Ireland.* [20th June 1810.]

Most Gracious Sovereign,

45 G. 3. c. 18.

46 G. 3. c. 62.

47 G. 3. Sess. 1. c. 31.

47 G. 3. Sess. 2. c. 16.

47 G. 3. Sess. 2. c. 18.

46 G. 3. c. 12. 120.

47 G. 3. Sess. 2. c. 1.

48 G. 3. c. 80.

49 G. 3. c. 74.

Duties and Drawbacks granted and allowed by recited Acts continued till July 5, 1811, except

WHEREAS an Act was made in the Forty-fifth Year of His present Majesty's Reign, intituled, "An Act for granting unto His Majesty until the Twenty-fifth Day of *March* One thousand eight hundred and six, certain Rates and Duties, and to allow certain Drawbacks and Bounties upon Goods, Wares, and Merchandize imported into and exported from *Ireland*, in lieu of former Rates and Duties, Drawbacks and Bounties:" And whereas an Act was made in the Forty-sixth Year of His present Majesty's Reign, intituled, "An Act for granting unto His Majesty until the Twenty-ninth Day of *September* One thousand eight hundred and six, certain Duties on the Importation, and to allow certain Drawbacks and Bounties on the Exportation of certain Sorts of Iron, Sugar, and Tea, into and from *Ireland*:" And whereas an Act was made in the Forty-seventh Year of His present Majesty's Reign, to repeal Part of the Duties on the Importation of unmanufactured Tobacco in *Ireland*: And whereas another Act was made in the Forty-seventh Year of His present Majesty's Reign, intituled, "An Act to grant to His Majesty until the Fifth Day of *July* One thousand eight hundred and eight, certain Duties on the Importation, and to allow certain Drawbacks on the Exportation of certain Goods, Wares, and Merchandize, into and from *Ireland*:" And whereas another Act was made in the Forty-seventh Year of His present Majesty's Reign, to provide for the Decrease and Suspension, in certain Cases, of Part of the Countervailing Duty on *British* Refined Sugar imported into *Ireland*: And whereas such of the said recited Acts as were temporary have been from Time to Time continued by several Acts passed in the Forty-sixth and Forty-seventh Years of His present Majesty's Reign, and by an Act passed in the Forty-eighth Year of His present Majesty's Reign the said recited Acts were amended and continued, and by an Act made in the last Session of Parliament the said recited Acts were further continued, and are in force until and upon the Fifth Day of *July* One thousand eight hundred and ten, and it is expedient that all the said recited Acts, and also the several Rates and Duties granted, and the Drawbacks and Bounties allowed by them, or any of them, should be further continued in Manner herein-after mentioned: May it therefore please Your Majesty that it may be enacted; and be it enacted by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the Rates and Duties granted, and the Drawbacks and Bounties allowed by the said recited Acts, or any of them, until and upon the Fifth Day of *July* One thousand eight hundred and ten, shall respectively continue and be in force throughout *Ireland*,

Authority of Parliament in lieu thereof, and that the said Company shall give Security by Bond or Bonds to His Majesty, His Heirs and Successors, for the due Repayment of all such Advances, together with the Charges incident to the same as aforesaid, within the Period, and in the Manner herein provided.

Exchequer Bills may be taken in Payment of Revenue.

VI. And be it further enacted, that all and every the Exchequer Bills to be made forth by virtue of this Act, or so many of them as shall from Time to Time remain undischarged and uncanceled, shall and may from and after the Fifth Day of *April* One thousand eight hundred and eleven, be received and taken, and shall pass and be current to all and every the Receivers and Collectors in *Great Britain* of the Customs, Excise, or any Revenue, Supply, Aid or Tax whatsoever already granted, due, or payable, or which shall or may hereafter be granted, due, or payable to His Majesty, His Heirs and Successors, and also at the Receipt of the Exchequer from the said Receivers or Collectors, or from any other Person or Persons, Bodies Politic or Corporate whatsoever, making any Payments there to His Majesty, His Heirs and Successors, for or upon any Account, Cause, or Occasion whatsoever, according to the Purport and true Meaning of this Act; and that such of the same Bills as shall be received at the Exchequer shall and may be locked up and secured as Cash, according to the Course of the Exchequer settled and established by Law for locking up and securing Monies received in Specie there.

Bank may advance the Money.

VII. And be it declared and further enacted, That it shall and may be lawful for the Governor and Company of the Bank of *England*, to advance or lend to His Majesty, upon the Credit of the Exchequer Bills to be made out in pursuance of this Act, any Sum or Sums of Money, not exceeding in the Whole the Sum of One Million five hundred thousand Pounds; any Thing in an Act made in the Fifth and Sixth Years of the Reign of King *William* and Queen *Mary*, intituled, "An Act for granting to Their Majesties several Rates and Duties upon Tonnage of Ships and Vessels, and upon Beer, Ale, and other Liquors, and for securing certain Recompences and Advantages in the said Act mentioned, to such Persons as shall voluntarily advance the Sum of One Million five hundred thousand Pounds towards carrying on the War against France," or in any subsequent Act, to the contrary thereof in anywise notwithstanding.

Act may be altered this Session.

VIII. And be it further enacted, That this Act may be altered, varied, or repealed by any Act or Acts to be passed in this Session of Parliament.

### 51 GEORGII III. CAP. VIII.

*An Act for punishing Mutiny and Desertion; and for the better Payment of the Army and their Quarters.* [22nd March 1811.]

Sentence of Transportation in India, &c to be notified by the Commander in Chief to some Judge of One of the Supreme Courts, who shall make Order for such Transportation in Manner directed by 39 and 40 G. 3. c. 79. s. 13.

X. PROVIDED always, and be it further enacted, That whenever any Sentence of Transportation passed by any Court Martial holden in the *East Indies* or in His Majesty's Settlements of the *Cape of Good Hope* or *Ceylon*, or in any Settlement occupied by His Majesty's Forces beyond the *Cape of Good Hope*, is to be carried into Execution, or Mercy shall be extended to any Offender liable to the Punishment of Death by the Sentence of any Court Martial in the *East Indies*, upon Condition of Transportation, the same shall be notified in Writing by the Commander in Chief of His Majesty's Forces in *India*, or in the Absence of the Commander in Chief, then by the Adjutant General for the Time being, to some Judge of One of the Supreme Courts of Judicature of the Presidencies of *Fort William*, *Fort Saint George*, or *Bombay*, or the Chief Justice or other Judge at the Island of *Ceylon* or the *Cape of Good Hope*, or any such other Settlement as aforesaid, and thereupon such Judge shall make an Order for the Transportation of such Offender, upon the Terms and for the Time which shall be specified in such Notification, and shall also make such other Order or Orders, and do all such other Acts consequent upon the same, as any such Judge is authorized to make or do, under an Act passed in a Parliament holden

holden in the Thirty-ninth and Fortieth Years of His Majesty's Reign, intituled, "An Act for establishing further Regulations for the Government of the *British Territories in India*, and "the better Administration of Justice within the same," with respect to Offenders ordered to be transported by Sentence of the Criminal Courts in *India*, and the Governor and Council of such Presidency respectively shall, and they are hereby required to take Order for the Transportation of all such Offenders accordingly.

LXXV. Provided nevertheless and it is hereby enacted and declared by the Authority aforesaid, That from and after the said Twenty-fourth Day of *March* One thousand eight hundred and eleven, when and as often as any Person or Persons shall be inlisted as a Soldier or Soldiers in His Majesty's Land Service, he or they shall, within Four Days, but not sooner than Twenty-four Hours, after such inlisting respectively, be carried or go with some Officer, Non-commissioned Officer, or Private Soldier belonging to the Recruiting Party by which he shall be inlisted, or with the Person employed on the Recruiting Service with whom he shall have inlisted, before some Justice of the Peace of any County, Riding, City, or Place, or Chief Magistrate of any City or Town Corporate, residing or being next to, or in the Vicinity of the Place and acting for the Division or District where such Person or Persons shall have been inlisted, and not being an Officer in the Army, and before such Justice or Chief Magistrate he or they shall be at Liberty to declare his or their Dissent to such inlisting; and upon such Declaration and returning the Inlisting Money, and also each Person so dissenting paying the Sum of Twenty Shillings for the Charges expended or laid out upon him, together with such full Rate allowed by Law for the Subsistence or Diet and Small Beer furnished to such Recruit subsequent to the Period of his having been inlisted, such Person or Persons so inlisting shall be forthwith discharged and set at Liberty, in the Presence of such Justice or Chief Magistrate; but if such Person or Persons shall refuse or neglect, within the Space of Twenty-four Hours, to return and pay such Money as aforesaid, he or they shall be deemed and taken to be inlisted, as if he or they had given his or their Assent thereto before the said Justice or Chief Magistrate; and if such Person or Persons shall declare his or their having voluntarily inlisted himself or themselves, then such Justice or Chief Magistrate shall, and he is hereby required forthwith to read over, or in his own Presence to cause to be read over, to such Person or Persons the Third and Fourth Articles of the Second Section, and the First Article of the Sixth Section, of the Articles of War against Mutiny and Desertion, and to tender and administer to such Person or Persons respectively not only the Oath of Fidelity mentioned in the said Articles of War, but also the Oath mentioned in the Schedule to this Act annexed, marked (A.), or if the Person shall be desirous of inlisting without any Limitation of Period of Service, the Oath in the Schedule to this Act annexed, marked (B.); and if such Person or Persons shall take the said Oaths, then such Justice or Chief Magistrate shall, and he is hereby required forthwith to certify under his Hand the inlisting and swearing, together with the Place of the Birth, Age, and Calling, if known, of such Person or Persons in the Form mentioned in the Schedule to this Act annexed, marked (C.); if the Oath in the Form marked (A.) shall have been taken, and in the Form marked (D.) if the Oath in the Form marked (B.) shall have been taken, except in the Case of Recruits inlisted to serve either in His Majesty's Troops, or in the Forces of the *East India Company*, according as His Majesty shall think fit, in pursuance of an Act passed in the Thirty-ninth Year of the Reign of His Majesty, intituled, "An Act for better recruiting the Forces of the *East India Company*," in which Case every such Recruit shall, instead of the said Oath of Fidelity, and of the Oath contained in the Schedule (A.) or (B.) to this Act annexed, take the Oath of Allegiance directed by the said Act of the Thirty-ninth of His Majesty, and contained in the Schedule to this Act annexed, marked (E.); and the Justice or Chief Magistrate shall certify such Inlistment and Swearing accordingly in the Form mentioned in the Schedule to this Act annexed, marked (F.); and except also in the Case of Recruits enlisted for the special Purpose of serving in the *East Indies*, in the Forces of the *East India Company* only, in pursuance of an Act passed in the Fiftieth Year of the Reign of His Majesty, intituled, "An Act to amend Two Acts relating to the raising Men for the Service of the *East India Company*, and the quartering and billeting such Men, and to Trials by "Regimental Courts-martial," in which case every such Recruit shall, instead of the said Oath of Fidelity take the Oath directed to be taken by the said Act of the Fiftieth Year of His present Majesty aforesaid, and contained in the Schedule to this Act annexed, marked (G.), and instead of the Oath of Service contained in the Schedule (A.) or (B.) to this Act annexed, shall take the Oath directed to be taken by the said recited Act of the Fiftieth Year aforesaid, and contained in the Schedule to this Act annexed, marked (H.), and the Justice or Magistrate shall certify such Inlistment and Swearing accordingly, in the Form mentioned in the Schedule to this Act annexed, marked (I.); and if any such Person or Persons, so to be certified, shall wilfully refuse to take the

Clause for Relief of Persons hastily enlisting themselves.

Such Persons not paying the Inlisting and Subsistence Money within the limited Time to be deemed to be inlisted; in which Case, or if they inlist, the Justices to read over to them certain Sections of the Articles of War and administer certain Oaths.

Recruits inlisted under 39 G. 3. c. 109. for the *East India Company's* Service, &c.

shall take the Oath of Allegiance.

Recruits inlisted under 50 G. 3. c. 87. shall take the Oaths in Schedules (G.) & (H.)



Name and Residence  
of Recruits to be  
taken down.

Justices may discharge  
Persons hastily enlist-  
ing themselves on  
paying the Inlisting  
Money.

said Oath of Fidelity before the said Justice or Chief Magistrate, it shall and may be lawful for such Officer from whom he has received such Money as aforesaid, to detain and confine such Person or Persons until he or they shall take the said Oath of Fidelity; and every Military Officer that shall act contrary hereto, or offend herein, shall incur the like Penalty and Forfeiture as is by this Act to be inflicted upon any Officer for making a false and untrue Muster; and the Penalty and Forfeiture shall be levied and recovered in the same Manner as any Penalties or Forfeitures are by this Act to be levied or recovered: Provided always, that every Non-commissioned Officer or Private Soldier who shall inlist any Recruit, shall at the Time of such inlisting enquire the Christian and Surname and Place of Abode of such Recruit, and either take the same down in Writing, or give the same to the Non-commissioned Officer commanding the Recruiting Party to be so taken down: Provided also, that it shall be lawful for any Justice of the Peace to discharge any Person who shall have hastily inlisted, and who shall apply to him to declare his Dissent within such Four Days as aforesaid, upon Payment of the Sum of Money required to be paid by any Recruit declaring his Dissent under this Act, notwithstanding no Officer, Non-commissioned Officer, or Private Soldier belonging to the Recruiting Party shall be with the Recruit, if it shall appear to such Magistrate upon the Examination of such Recruit, or of any other Person that the Recruiting Party has left the Place where such Recruit was inlisted, or that such Recruit could not procure any Non-commissioned Officer belonging to such Party to go with such Recruit before the Justice of the Peace; and the Sum paid by such Recruit upon his Discharge shall be kept by the Justice of the Peace, and paid when demanded to any Person belonging to the Recruiting Party entitled thereto demanding the same.

*Schedules A, B, C, and D, are omitted.*

#### SCHEDULE (E.)

##### *Oath of Allegiance, 39 Geo. III. c. 109.*

I *A. B.* being enlisted to serve, either in His Majesty's Troops, or in the Forces of the *East India* Company, according as His Majesty shall think fit, do swear, That I will bear true Allegiance to our Sovereign Lord King *George*, and that I will, as in my Duty bound, defend him in His Person, Crown, and Dignity, against all His Enemies; and that so long as I shall remain in His Majesty's Service, I will duly observe and obey His Majesty's Orders and the Orders of the Generals and Officers set over me by His Majesty; and that if His Majesty shall please to appoint me to serve in the Forces of the United Company of Merchants of *England* trading to the *East Indies*, then I swear that I will also be true to the said United Company, and will duly observe and obey all their Orders, and the Orders of their Generals and Officers who shall be lawfully set over me.

#### SCHEDULE (F.)

To wit. } I — One of His Majesty's Justices of the Peace of — certify, That —  
aged — Years — Feet — Inches high, — Complexion, — Eyes, —  
Hair, came before me at — on the — Day of — One thousand eight hundred and —  
and acknowledged that he had voluntarily inlisted himself for the Bounty of — to serve either  
in His Majesty's Army or in the Forces of the *East India* Company, according as His Majesty  
shall think fit to order. And I further certify, That, in my Presence, the Third and Fourth  
Articles of the Second Section, and the First Article of the Sixth Section of the Articles of War,  
against Mutiny and Desertion, were read over to him; that he took the Oath of Allegiance pre-  
scribed by the Act of 39 Geo. c. 109. to be taken instead of the Oath of Fidelity mentioned in the  
said Articles of War, and also the Oath above set forth; and that he — received the Sum of  
— on being attested.



## SCHEDULE (G.)

I *A. B.* being inlisted to serve in the [Infantry or Artillery, *as the Case may be*] of the *East India* Company, do swear, That I will bear true Allegiance to our Sovereign Lord King *George*, and that I will, as in Duty bound, defend him in His Person, Crown and Dignity, against all His Enemies; and I swear that I will also be true to the said United Company, and will duly observe and obey all their Orders, and the Orders of their Generals and Officers who shall be lawfully set over me.

## SCHEDULE (H.)

I *A. B.* do make Oath, That I am (or have been, *as the Case may be*) [*state Occupation, if any, or state if of none*], and to the best of my Knowledge and Belief was born in [*state County, Parish or Place, &c.*] and that I am of the Age of — Years, and that I do not belong to the Militia or to any Regiment in His Majesty's Service, or to His Majesty's Navy or Marines, and that I will serve the United Company of Merchants of *England*, trading to the *East Indies*, until I shall be duly and legally discharged [*or if the Recruit enlists for limited Service, then leave out the Words scored under and insert*] for the Period of Twelve Years [*if the Person inlisting is of the Age of Eighteen Years or upwards, but if under Eighteen Years, then the Difference between his Age and Eighteen to be added to such Twelve Years, as the Case may be, and such Period to be inserted instead of Twelve Years*] provided the said United Company should so long require my Service.

## SCHEDULE (I.)

I — One of His Majesty's Justices of the Peace of — [or Chief Magistrate of —] do hereby certify, that — appeared to be — Years old, — Feet — Inches high, — Complexion, — Eyes, — Hair, came before me at — on the — Day of — and stated himself to be of the Age of — Years, and that he had no Rupture, and was not troubled with Fits, and was noways disabled by Lameness, Deafness, or otherwise, but had the perfect Use of his Limbs and Hearing; and was not an Apprentice, and acknowledged that he had voluntarily enlisted himself for the Bounty of — to serve the United Company of Merchants of *England* trading to the *East Indies*, and did engage to serve for the Period of — [*this Blank to be filled up by the Magistrate either until discharged or for Years, as in the preceding Form of Enlistment*] and I do hereby certify, that in my Presence the Third and Fourth Articles of the Second Section and the First Article of the Sixth Section of the Articles of War against Mutiny and Desertion were read over to him, and he took the Oath of Fidelity mentioned in the Act of the Fiftieth Year of His present Majesty, and also the Oath above set forth, and that he received the Sum of — on being attested, and that I have given to the said — a Duplicate of this Certificate, signed with my name.

*The Provisions of the above Clauses of this Act, with the Schedules, have been annually renewed by the undermentioned Acts; which, therefore, it is not necessary to insert, viz.*

52 Geo. III. Cap. 22, Sections 10 & 78.

55 Geo. III. Cap. 20, Sections 12 & 89.

53 Geo. III. — 17, — 12 & 87.

55 Geo. III. — 108, — 12 & 92.

54 Geo. III. — 25, — 12 & 89.

56 Geo. III. — 10, — 12 & 92.

II. And be it further enacted, That the said additional Duty of Customs shall be charged and payable on any Rice which having been warehoused or otherwise secured under the Authority of any Act of Parliament, without Payment of Duty, shall be taken out of any such Warehouse or Place where the same shall have been lodged or secured, for the Purpose of being used or consumed in *Great Britain*; after the said Fifth Day of *January* One thousand eight hundred and thirteen, notwithstanding such Rice may have been imported into *Great Britain*, before the Fifth Day of *January* One thousand eight hundred and thirteen.

Rice taken out of Warehouse after January 5, 1813, to pay the Duty although imported before that Day.

## 53 GEORGII III. Cap. XVII.

*An Act for punishing Mutiny and Desertion; and for the better Payment of the Army and their Quarters.* [23d March, 1813.]

XXI. PROVIDED always, and be it further enacted, That no general Court-martial for the trial of any Officer, (except the same shall be holden in any place beyond the Seas out of His Majesty's Dominions, and out of any of the Settlements belonging to the United Company of Merchants of *England*, trading to the *East Indies*, or in *Africa* or *New South Wales*), shall consist of less than Thirteen Members.

General Courts Martial (except, &c.) not to consist of less than 13 Members.

XXII. Provided always, and be it further enacted, That no General Court-martial, consisting of any less Number than Thirteen Commissioned Officers, unless holden in any Place beyond the Seas out of His Majesty's Dominions, or out of any of the Settlements belonging to the United Company of the Merchants of *England*, trading to the *East Indies*, or in *Africa* or *New South Wales* as aforesaid, shall sentence any Non-commissioned Officer or Soldier to Loss of Life or Limb, or Transportation.

No General Court Martial of less than 13, except in certain Places, shall sentence any Soldier to Loss of Life, &c.

XCI. And whereas various Persons are in the Habit of advertising for Recruits for Regiments of the Line, the Militia, and for the Service of the Honourable the *East India* Company, and also under Pretence of procuring Substitutes for the same, to the great Detriment of the Service; be it therefore further enacted, That all Persons whatever who shall, after the passing of this Act, advertise, post, or disperse Bills for the Purpose of procuring Recruits or Substitutes in any Manner whatever, without the express Permission in Writing of the Adjutant General if for the Line or Militia, or of the Court of Directors if for the Honourable *East India* Company's Service, or receive any Recruit as aforesaid at his House or Office under any such Bill or Advertisement, shall forfeit the Sum of Twenty Pounds for every such Offence, to be recovered on Conviction before two Magistrates, One Moiety to the Informer and the other to the Poor of the Parish where such Information shall be laid, and on Default thereof shall be committed to the Common Gaol or other public Prison, at the Discretion of the Magistrates, for any Period not exceeding Three Months, and not less than One Month, for each and every such Offence.

Advertising for Recruits to be authorized.

*The Provisions of the above Clauses have been annually renewed by the undermentioned Acts: viz:*

54 Geo. III. Cap. 25, S. 22, 23, and 94.

55 Geo. III. Cap. 108, S. 22, 23, and 98.

55 — — 20, 22, 23, and 94.

56 — — 10, 22, 23, and 99.

## 53 GEORGII III. Cap. XXX.

*An Act to allow a Bounty on the Exportation of the Manufactures of Refuse or Waste Silk.* [1st April 1813.]

WHEREAS it is expedient, for the further Encouragement of the Silk Manufacturers of *Great Britain*, that the Bounty now allowed by Law on the Manufactures of Raw or Thrown Silk should be extended to the Manufactures of Waste Silk or Refuse Silk, provided the Goods at the

on the Sails of his Boat, or who shall have any Sails on board not duly numbered and marked as aforesaid, or improperly numbered and marked, or who shall in any Manner evade or attempt to evade any of the Provisions of this Act, shall forfeit his Licence, and also a Sum not exceeding Ten Pounds.

Licensed Boatmen refusing to take off licensed Pilots to lose Licence.

XIII. And be it further enacted, That every such licensed Boatman as aforesaid, who shall on being applied to by a licensed Cinque Port Pilot to take him off to any Ship or Vessel, refuse so to do, unless prevented by Illness, shall upon due Proof thereof to the Satisfaction of the Commissioners for executing this Act in the Place where he shall be licensed, forfeit his Licence, and any Sum of Money not exceeding the Sum of Twenty Pounds for each Offence.

Pilots neglecting to go off to any Vessel shall lose their Turn.

XIV. And be it further enacted, That if any Pilot, whose Turn it shall be to go off on Duty, shall neglect or refuse so to do, on being applied to by any licensed Boatmen to go off to any Ship or Vessel, such Pilot so neglecting or refusing to go off to such Ship or Vessel, shall lose his Turn, and such Ship or Vessel shall be piloted by any duly licensed Pilot who shall first get on board, but which shall not be taken for the Turn of Duty of such last-mentioned Pilot.

### 53 GEORGII III. Cap. CLV.

*An Act for continuing in the East India Company, for a further Term, the Possession of the British Territories in India, together with certain exclusive Privileges; for establishing further Regulations for the Government of the said Territories, and the better Administration of Justice within the same; and for regulating the Trade to and from the Places within the Limits of the said Company's Charter.*

[21st July 1813.]

33 G. 3. c. 52i

9 & 10 W. 3. c. 44-

33 G. 3. c. 31. (I.)

WHEREAS by an Act of the Parliament of *Great Britain*, passed in the Thirty-third Year of His present Majesty's Reign, for continuing in the *East India Company*, for a further Term, the Possession of the *British Territories*, in *India*, together with their exclusive Trade, under certain Limitations, and for other Purposes, the Possession and Government of the *British Territories* in *India*, together with an exclusive Trade in, to, and from the *East Indies*, and other the Limits described in an Act made in the Ninth Year of the Reign of King *William the Third*, or in a certain Charter of the Fifth Day of *September*, in the Tenth Year of the same King, were continued in the United Company of Merchants of *England* trading to the *East Indies*, for a Term thereby limited, under certain Regulations and Conditions: And whereas by an Act of the Parliament of *Ireland*, passed in the same Thirty-third Year of His present Majesty's Reign, for regulating the Trade of *Ireland* to and from the *East Indies*, under certain Conditions and Provisions, for a Time therein mentioned, the exclusive Privileges granted to the said United Company by the said Act of the Parliament of *Great Britain* were confirmed, subject to certain Conditions and Restrictions: And whereas it is expedient that the Territorial Acquisitions mentioned in the said Act of the Parliament of *Great Britain* of the Thirty-third Year of His present Majesty, together with such other Territorial Acquisitions on the Continent of *Asia*, or in any Islands situate to the North of the Equator, as are now in the Possession and under the Government of the said United Company, with the Revenues thereof, should, without Prejudice to the undoubted Sovereignty of the Crown of the United Kingdom of *Great Britain* and *Ireland*, in and over the same, or to any Claim of the said United Company to any Rights, Franchises, or Immunities, remain in the Possession and under the Government of the said United Company for a further Term; subject to such Powers and Authorities for the Superintendence, Direction, and Controul over all Acts, Operations, and Concerns, which relate to the Civil or Military Government or Revenues of the said Territories, and to such further or other Powers, Authorities, Rules, Regulations, and Restrictions, as have been already made or provided by any Act or Acts of Parliament in that Behalf, or are made and provided by this Act: And whereas it is expedient that from and after the Tenth Day of *April* One thousand eight hundred and fourteen, the Right of trading, trafficking, and adventuring, in, to, and from, all Ports and Places within the Limits

of

aforesaid, during the preceding Year, shall be laid before Parliament within Fifteen Days after the next Meeting thereof.

XCV. Provided always, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to prejudice or affect the undoubted Sovereignty of the Crown of the United Kingdom of *Great Britain and Ireland*, in and over the said Territorial Acquisitions; nor to preclude the said United Company, after the Determination of the Term hereby granted, from the Enjoyment of or Claim to any Rights, Franchises, or Immunities which they now have, or to which they may hereafter be entitled.

Act not to prejudice the King's Sovereignty, or affect Rights of the Company.

XCVI. And whereas Doubts have been entertained whether the several Governments of the said Company have sufficient Power in all Cases to make Laws and Regulations and Articles of War, for the Order and Discipline of Officers and Soldiers, being Natives of the *East Indies*, or other Places within the Limits of the said Company's Charter, in the Service of the said Company, and for the Administration of Justice by Courts Martial to be holden upon such Officers and Soldiers; and it is expedient that such Doubts should be removed: Be it therefore enacted and declared, That the several Governments of *Fort William*, *Fort Saint George*, and *Bombay*, have and shall, during the Continuance of the Term hereby granted to the said Company, be deemed and taken to have full Power and Authority to make all such Laws and Regulations and Articles of War, as they may think fit, for the Order and Discipline of all Officers and Soldiers, Natives of the *East Indies*, or other Places within the Limits of the said Company's Charter, in their respective Services, and for the Administration of Justice by Courts Martial to be holden on such Native Officers and Soldiers, and for the Constitution and Manner of Proceeding of such Courts Martial, and for all other Purposes relating to or in any Manner concerning such Native Officers and Soldiers, in as full and ample a Manner as the said Governments respectively may make any other Laws or Regulations for the Government of the Natives of the several Territories subject to the said Presidencies respectively, any Act of Parliament, or other Matter or Thing to the contrary notwithstanding: Provided always, that all Laws, Regulations, and Articles of War, hereafter to be made respecting any of the Matters aforesaid, whereby the Rights, Persons, or Property of any such Native Officers or Soldiers may be affected, shall be made and promulgated in every Respect in the same Manner as other Regulations affecting the Rights, Persons, or Property of Natives or other Individuals amenable to the Provincial Courts of the Presidency of *Fort William* in *Bengal*, are directed to be made by virtue of an Act passed in the Thirty-seventh Year of His Majesty's Reign, intituled, "An Act for the better Administration of Justice at *Calcutta*, *Madras*, and *Bombay*, and for preventing *British* Subjects from being concerned in Loans to the Native Princes in *India*."

The Governments in India empowered to make Laws, Regulations, and Articles of War, for the Native Troops; and to hold Courts Martial.

XCVII. And be it further enacted and declared, That all Laws, Regulations, and Articles of War heretofore made by any of the said Governments, respecting the said Native Officers and Soldiers, or the Administration of Justice by Courts Martial to be holden upon them, or the Constitution or Proceeding of such Courts Martial, or in any Manner respecting the Government, Order, or Discipline of such Native Officers or Soldiers, and also all established Usages acted upon by such Governments, respecting any of the Matters aforesaid, although the same may not have originated in any written Law or Regulation thereof, were, and that such of the said Laws, Regulations, Articles of War, and established Usages as are now subsisting, are, and until altered or repealed by the said Governments respectively shall be, to all Intents and Purposes, valid; and that all Courts Martial holden according to such Laws, Regulations, or Articles of War, or established Usages, and all Proceedings of the same respectively, and all other Acts or Proceedings done or had under such Laws, Regulations, Articles of War, or established Usages, are hereby ratified and confirmed, and declared to be valid, and to have been legally had and done; so far as the same respectively were and are conformable to such Laws, Regulations, Articles of War, and established Usages.

Former Laws, Articles of War, and established Usages respecting Native Troops confirmed.

XCVIII. And whereas it is expedient that the Governments of the said Company established at *Fort William*, *Fort Saint George*, *Bombay*, and *Prince of Wales Island* respectively, should have Authority to impose Duties and Taxes to be levied within the several Towns of *Calcutta* and *Madras*, the Town and Island of *Bombay* and *Prince of Wales Island*, and also Duties and Taxes to be paid by Persons subject to the Jurisdictions of the Supreme Court of Judicature at *Fort William* in *Bengal*, the Supreme Court of Judicature at *Madras*, the Court of the Recorder of *Bombay*, and the Court of Judicature at *Prince of Wales Island* respectively; be it therefore enacted, That it shall and may be lawful to and for the Governor General in Council of *Fort William* in *Bengal*, and to and for the Governor in Council of *Fort Saint George*, and to and for the Governor in Council of *Bombay*, and to and for the Governor in Council of *Prince of Wales Island*, within the respective Presidencies of

Governor General and Governors in Council at *Fort William*, *Madras*, *Bombay*, and *Prince of Wales Island*, may impose Duties of Customs and other Taxes on Places and Persons within the Jurisdiction of the Courts established by the King's Charter; in the same Manner as in Places without such Jurisdiction:

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## MUTINY ACT, 1823

### CHAPTER I.

4th Geo. IV., cap. 81.

1.—*An Act to consolidate and amend the Laws for punishing Mutiny and Desertion of Officers and Soldiers in the Service of the East-India Company, and to authorize Soldiers and Sailors in the East-Indies to send and receive Letters at a reduced Rate of Postage.* [18th July 1823.]

WHEREAS, &c. (annulling the 27th Geo. II. cap. 9, and 1 Geo. III. cap. 14.) Be it therefore enacted, by the K.'s most excellent M., by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same (1), That if any person who is or shall be *commissioned or in pay* (2) as an officer, or who is or shall be *enlisted or in pay* (3) as a non-commissioned officer or soldier in the service of the said Co., at any time during the continuance of this act, shall *begin, excite, cause, or join in any mutiny or sedition* (4), in the land or marine forces of H. M., or of the said Co., or shall not use his utmost endeavours to *suppress the same*, or coming to the *knowledge* of any *mutiny or intended mutiny*, shall not without delay give information thereof to his *com. officer* (5); or shall *misbehave* himself before the enemy, or shall *shamefully abandon or deliver up* any garrison, fortress, post, or guard committed to his charge, or which he shall be commanded to defend (6); or shall *compel* the gov. or com. officer of any garrison, &c. to *deliver up to the enemy, or to abandon the same*; or shall *speak words or use any other means to induce* such gov. or com. officer or others to *misbehave* before the enemy, &c. (7); or shall *leave his post* before relieved; or shall be found *sleeping on his post* (8); or shall hold *correspondence with, or give advice or intelligence to, any rebel or enemy of H. M. or the said Co., either by letters, messages, signs, or tokens, in any manner or way whatsoever*; or shall *treat or enter upon any terms* with such rebel or enemy, without the license of the said United Co., or of the said United Co.'s Gov.-gen. in council. or Gov. in council at any of

their presidencies, or without the license of the gen. or chief com. (9); or shall *strike* or use any *violence* against his *superior* officer, being in the *execution* of his office; or shall *disobey* any *lawful* command of his *superior* officer (10), or shall *desert* (11) the said Co.'s service; all and every person and persons so offending in any of the matters (12) before mentioned, whether such offence shall be committed *within* the dominions of H. M., or the possessions or territories which are or *may* be under the government of the said Co., or in *foreign parts*, upon *land* or upon the *sea*, *within* or *without* the limits of the charter of the said United Co., shall suffer *death* (13), or *such other punishments* as by a ct.-mar. shall be awarded.—(See note 14 for the authority for assembling gen. cts.-mar.)

II.—*Persons accused of capital crimes at places situated above 120 miles from Calcutta, Madras, or Bombay, amenable to a General Court-martial.*—(See sec. 17, M. A. No. IV., p. 8.)

Sec. 2.—And be it further enacted, That it shall and may be lawful for the gen. or other officer com. in chief the forces of or belonging to the presidencies of Ft. Wm., Ft. St. Geo., and Bombay respectively, for the time being, having authority (14) to appoint cts. mar., to appoint gen. cts. mar., and to issue his warrant to any gen. or other officer (15), *having the command of a body of troops of H. M. or of the said Co., empowering them respectively to appoint gen. cts.-mar. as occasion may require, to be holden within the territories of any foreign state, or in any country under the protection of H. M. or the said United Co., or at any place other than Prince of Wales' Island, in the territories under the govt. of the said United Co., and situated above 120 miles from the said presidencies respectively, for the trial of any person under his command accused of having committed wilful murder, theft, robbery, rape, or any other crime which is capital by the laws of England, or of having used violence, or committed any offence against the person or property of any subject of H. M., or any other person entitled to H. M.'s protection, or to the protection of the respective govts. of the E. I. Co., or of any state in alliance with the said Co., within the territories of any foreign state (19), or in any country under the protection of H. M. or the said United Co., or at any place other than Prince of Wales' Island, in the territories under the govt. of the said United Co., situated above 120 miles from the said presidencies re-*

spectively ; and the persons accused (20), if found guilty, shall suffer *death*, or be liable to *transportation* for life or for a term of years, or to *such other punishments* (21), according to the nature and degree of their respective offences, as by the sentence of any such *gen. ct.-mar.* shall be awarded: Provided always, That any person so tried shall not be liable to be tried for the same offence by any other court whatsoever.(22)

III.—*Persons liable to be tried by Court-martial may be apprehended and delivered over to their Regiments.*

Sec. 3.—And be it further enacted, That if any person liable to be tried by a court-martial for any such offence alleged to have been committed *within* the territories of any foreign state, or in any country under the protection of H. M. or the said United Co., or at any place other than Prince of Wales' Island, in the territories under the government of the said United Co., situate above 120 miles from the said presidencies of Fort William, Fort St. George, and Bombay respectively, and for which no proceeding shall have been commenced in any ordinary court of competent civil or criminal jurisdiction, shall be apprehended by the authority of, or brought before any magistrate for any such offence ; it shall and may be lawful for such magistrate, and he is hereby required to deliver over such accused person to the com. officer of the regiment, corps, or detachment to which such accused person shall belong, or to the com. officer of the nearest military station, for the purpose of his being tried by a *ct.-mar.* for such offence, as hereinbefore is provided in that behalf.

IV.—*Persons accused of capital crimes, &c., to be delivered over to the Civil Magistrate, unless they shall have been committed at any place above 120 miles from Calcutta, Madras, and Bombay.*

Sec. 17.—And be it further enacted, That if any officer or non-commissioned officer or soldier shall be accused of any capital crime, or of any violence or offence against the person, estate, or property of any of H. M.'s subjects, or any other person entitled to H. M.'s protection, or to the protection of the respective govts. of the E. I. Co., or of any state in *alliance* with the said Co., which is punishable by the known laws of the land ; the com. officer or officers of every regiment, troop, company, or party, is, and are, hereby required to use



his and their utmost endeavours to deliver over such accused person to the civil magistrate, and shall also be aiding and assisting to the officers of justice in the seizing and apprehending such offender, in order to bring him to trial; and if any such com. officer shall wilfully neglect or refuse, upon application made to him for that purpose, to deliver over any such accused person to the civil magistrate, or to be aiding or assisting to the officers of justice in apprehending such offender, every such officer so offending, and being thereof convicted upon any information or indictment in any of H. M.'s courts of record in India, shall be deemed and taken to be cashiered, and shall be *utterly disabled to have or to hold any civil or military office or employment* in the said United Co.'s service in the East Indies, provided a certificate of the said conviction be transmitted to the J. A. G. of the army to which such offender shall belong: Provided always, That nothing herein contained shall extend, or be construed to extend, to require the delivery over to the civil magistrate of any such person accused of any offence, who shall have been tried for such offence by any ct.-mar. in manner hereinbefore provided, in respect of offences committed within the territories of any foreign state, or in any country under the protection of H. M. or the said United Co., or at any place in or out of the territories of the said United Co., situate above 120 miles from the said presidencies of Ft. Wm., Ft. St. Geo., and Bombay respectively, or against whom any effectual proceeding shall have been taken, or ordered to be taken, for the purpose of bringing such person to trial by such ct.-mar. as aforesaid: Provided also, That no person or persons, being acquitted or convicted of any capital crime, violence, or offence, by the civil magistrate, shall be liable to be punished by a ct.-mar. for the same, otherwise than by cashiering.

*V.—Offenders may be tried in places other than where the offences have been committed.*

Provided (sec. xxxvi.) always, and be it further enacted, That if any officer or soldier, or any other person subject to the provision of this act, at any place out of the presidencies of Bengal, Madras, or Bombay, commit any of the offences for which he may be liable to be tried by a ct.-mar. by virtue of this act, and shall, after the commission of any such offence, go or be sent to any part of H. M.'s dominions, or to any station or part of the possessions or territories under the govt. of the said Co., or elsewhere, in the course of service abroad, or come to be brought within the said presidencies, or either of them,



before he be tried by a ct.-mar. for such offence, such officer or soldier shall be liable to be tried for the same at such other station or part of H. M.'s dominions, or the possessions or territories which are or may be under the govt. of the said Co., or elsewhere, in the same manner as if the offence had been committed where such trial shall take place.

VI.—*Recruits concealing Infirmities punishable.*

And be it further enacted (sec. xlv.), That any person who shall enlist into the Co.'s forces, and who shall be discovered to be incapable of active service, by reason of any infirmity which shall have been concealed by such person, or not declared before the justice of the peace at the time of his attestation, and mentioned at the foot thereof, may be transferred into any garrison, or veteran or invalid battalion, or into H. M.'s or Co.'s marine forces, notwithstanding he shall have been enlisted for any particular regt., and shall be entitled to receive such portion or residue of bounty only as shall be allowed by the said Co., by any regulation made in that behalf, in lieu and instead of the bounty upon which such man shall have been enlisted; any thing in any act or acts of parliament, or any rules or regulations relating to soldiers, to the contrary notwithstanding.—(See Ann. M. A. 1824, secs. 96—98.)

VII.—*After Embarkation, Officers and Soldiers subject to Mutiny Act and Articles of War (23).*

And be it further enacted, (sec. xlvii.), That all officers and soldiers who shall be enlisted or transferred (24) to the service of the United Co., and all officers in the said Co.'s service who may proceed in charge of, or be appointed to do duty (25) with such enlisted or transferred officers and soldiers, shall, from and after their embarkation to go abroad to such place, whereto they shall be sent in the service of the said Co., be, and are hereby adjudged to be, during their passage, subject to all the provisions and regulations of this act, and to all such provisions and regulations as officers and soldiers in the pay of the said United Co. shall from time to time be subject to, at the garrison or place to which such officers and soldiers shall be sent.—(See sec. 20—*Troops on board Ships of War.*)

*VIII.—Offences committed by Officers and Soldiers while on board of Ship, or previous to their arrival in India, cognizable after their arrival in India.*

And forasmuch (sec. xlviii.) as it may happen that offences may be committed by the said officers and men after their embarkation, and before their arrival at their place of destination abroad, which nevertheless cannot be tried and punished, during their passage, in such manner as such offences ought to be tried and punished (26); be it therefore enacted, That in every such case every such officer or soldier shall and may, after his arrival at his place of destination abroad, be tried and punished for every offence committed after his embarkation and before his arrival, in the same manner as he would have been liable to be tried and punished if such offence had been committed in any place where the offender could have been tried by any ct.-mar. held under the authority of this act."

*IX.—Discharged Soldiers subject to this Act till their arrival at and debarkation in Great Britain or Ireland.*

Provided also (sec. liii.) and be it further enacted, That every such soldier entitled to and claiming his discharge, and to be sent to Great Britain or Ireland, shall, until his arrival and debarkation in Great Britain or Ireland, be subject to the provision of this act, and the Arts. of War framed or to be framed by H. M. for the better govt. of the Co's forces.

*X.—No Soldier liable to process, except for a criminal matter, or a real debt amounting to 200 Sicca Rupees. (27).*

" And to prevent (sec. lv.), as far as may be, any unjust or fraudulent arrest that may be made upon soldiers, whereby the said United Co. may be deprived of their services (28), it is hereby further enacted, that no person who is or shall be listed, or who shall list and enter himself in the Co.'s service as a soldier, shall be liable to be taken out of the Co.'s service, by any process or execution whatever, (33) other than for some criminal matter, unless for a real debt (34) or other just cause of action, and unless before the taking out of such process or execution (not being for a criminal matter) the pltff. or pltffs. therein, or some other person or persons on his or their behalf, shall make affidavit before one or more judge or judges of the Court of Record (35), or other court out of which such process or execution shall issue, or before some person authorized to take affidavits in such courts, that to his or their knowledge the original sum justly due and

owing to the plttf. or plttfs. from the deft. or defts. in the action or cause of action on which such process shall issue, or the original debt for which such execution shall be sued out, amounts to the value of 200 sicca rupees at the least, over and above all costs of (36) suit in the same action, or in any other action on which the same shall be granted; a memorandum of which oath shall be marked on the back of such process or writ, for which memorandum or oath no fee shall be taken; and if any person shall nevertheless be arrested contrary to the intent of this act, it shall and may be lawful for one or more judge or judges of such court, upon complaint thereof made by the party himself, or by any of his superior officers, to examine into the same by the oath of the parties or otherwise, and by warrant under his or their hand and seal, or hands and seals, to discharge such soldiers so arrested contrary to the intent of this act, without paying any fee or fees, upon due proof made before him or them that such soldier so arrested was legally enlisted as a soldier in the Co.'s service, and arrested contrary to the intent of this act, and also to award to the party so complaining, such costs as such judge or judges shall think reasonable, for the recovery whereof he shall have the like remedy that the person who takes out the said execution might have had for his costs, or the plttf. in the like action might have had for the recovery of his costs, in case judgment had been given for him with costs against the defendant in the said action. *Ann. M. A. 1824. sec. 122.*"—(By the 62nd section it is declared that the native troops are not amenable to the provisions of this act.)

*XI.—Where Troops are serving beyond the jurisdiction of the Court of Requests, Actions of debt not exceeding 400 Sicca Rupees shall be cognizable before a Military Court, consisting of five and not less than three commissioned officers, &c.*

And be it further enacted (sec. lvii.), that in all places where the said Co.'s forces now are or may be employed, or where any body of H. M.'s forces may be serving with the forces of the said Co., situate beyond the jurisdiction of the Court of Requests (37) established at the cities of Calcutta, Madras, and Bombay respectively, actions against such officers, non-commissioned officers, or soldiers, all persons licensed to act as sutlers to any corps or detachmt., or at any station or canton-

ment, or other persons amenable to the provisions of this act, or resident within the limits of a mil. cantonment, shall be cognizable before a Court of Requests composed of mil. officers, and not elsewhere; provided the value in question shall not exceed 400 sicca rupees (38); and that the debt. was a person of the above description when the cause of action arose; which court the com. officer of any station or cantonment is hereby authorized and empowered to convene, and the said court shall in all practicable cases consist of five com. officers, and in no instance of less than three, and the president thereof shall not be under the rank of a capt.; and every member assisting at any such court, before any proceedings to be had before it, shall take the following oath upon the Holy Evangelists; which oath shall be administered by the president of the court to the other members thereof, and to the president by any member having first taken the same oath; (that is to say)

“ I (39) swear, that I will duly administer justice, according to the evidence in the matter that shall be brought before me: So help me God.” “ And every witness before any such court shall be examined on oath, which such courts are hereby authorized to administer, or if natives of the East-Indies, on oath or solemn declaration, as the circumstances of the case may require; and it shall be competent for such courts, upon finding any debt or damage due, either to award execution thereof generally, or to direct that the whole or any part thereof shall be stopped and paid over to the creditor out of any pay or public money which may be coming to the debtor in the current or any future month; and in case the execution shall be awarded generally, the debt, if not paid forthwith, shall be levied by seizure and public sale of such of the debtor's goods (40) as may be found within the camp, garrison, or cantonment, under a written order of the com. officer, grounded on the judgment of the court, and the goods of the debtor, if found within the limits of the Co.'s garrison or cantonment to which the debtor shall belong at any subsequent time, shall be liable to be seized and sold in satisfaction of any remainder of such debt or damages; and if sufficient goods shall not be found within the limits of the camp, garrison, or cantonment, then any pub-

lic money (41), or any sum not exceeding the half-pay (42) accruing to the debtor, shall be stopped in liquidation of such debt or damage; and if such debtor shall not receive pay as an officer or soldier, or from any public department, but be a sutler, servant, or follower, he shall be arrested by like order of the com. officer, and imprisoned (43) in some convenient place within the mil. boundaries, for the space of two months, unless the debt be sooner paid: provided always, that from and after the time limited for the commencement of this act (44), so much of an act passed in the 58d Geo. III., cap. 155, as gives to magistrates the cognizance of debts due from officers or soldiers, being British subjects, to the natives of India resident without the jurisdiction of the Courts of Requests therein mentioned, shall be and the same is hereby repealed accordingly.—(The 62d section of the Mutiny Act declares that the native troops are not amenable to the provisions of this act.)

**XII.—Persons and Civil Officers employed in the Commissariat and Ordnance liable to this Act.**

And be it declared and enacted (sec. lx.), That all officers and persons who are or shall be *commissioned* or *employed* in the *commissariat* dept. (45), or as *storekeepers*, and all civil officers, who are or shall be employed by or act under the *ordnance* (46), and who are or shall be placed under the command of any gen. or other officer, shall be to all intents and purposes liable to the provisions of this act, and to the same rules and Arts. of War, and the same penalties and punishments, as in case of the Co.'s other forces.—(Ann. M. A. 1824, sec. 137.)

**XIII.—Troops in Places in Possession of the Company, or occupied by Persons subject to the Company, liable to the Articles of War (47).**

“ And whereas (sec. lxi) great mischief and inconvenience may arise, if it should be doubted whether troops in pay raised or serving in any of the possessions or territories, which are or may be under the govt. of the said United Co., or places which are or may be occupied by persons subject to the govt. of the said Co., or by any forces of the said Co., are, while under the command of any officer having a



commission immediately from the govt. of any of the presidencies of the said Co., liable to the rules and Arts. of War, and the same penalties and punishments as the Co.'s other forces are subject to ; to prevent such mischief, and remove all doubts, be it declared and enacted, That all officers and soldiers of any troops being mustered and in pay, which have been or are or shall be raised or serving as aforesaid, shall at all times and in all places be liable to martial law and discipline, and to the same trials, penalties, and punishments, in like manner, to all intents and purposes, as the Co.'s other forces."—(Ann. M. A. 1824, sec. 139.)

**XIV.—Native Troops to be always subject to Articles of War of Presidency to which they shall belong.**

And be it further enacted (sec. lxiii), That whenever any portion of such native troops shall be serving in any country or place out (48) of the possessions or territories which are or may be under the govt. of the said United Co., whether such be the dominions of H. M. or elsewhere, on the trial of all offences committed by any native officer or soldier or follower, reference shall be had to the Arts. of War framed by the govt. of the presidency to which such native officer, soldier, or follower, shall belong, and to the established usages mentioned and confirmed by the last recited act.—(See note 48).

**XV.—Protection to Officers and Soldiers for any Act, Matter, or Thing, to be acted or done under the Authority of the Act.**

And be it further enacted (sec. lxv.), That if any action(51), bill(52), plaint(53), or suit(54), shall be brought against any person or persons, for any act, matter, or thing, to be acted or done in pursuance of this act, it shall and may be lawful to and for all and every person or persons sued as aforesaid, to plead thereto the general issue (55), that he or they are not guilty, and to give this act and the special matter in evidence on any trial to be held thereupon ; and that the same was done in pursuance and by authority of this act, and if it shall appear so to have been done(56), the jury shall find for the deft. or defts. ; and if the verdict shall pass with the said deft. or defts. in any such action, or the plfff. or plffs. therein become nonsuited, or suffer any discontinuance thereof, that in every such case the justice or justices, or such other judge before whom the said matter

shall be tried, shall by force and virtue of this act allow unto the deft. or defts. his or their treble costs (57), which he or they shall have sustained by reason of their wrongful vexation in defence of the said action or suit, for which the said deft. or defts. shall have the like remedy as in other cases where the costs by the laws of the realm are given to defts. (58).—(Ann. M. A. 1824, sec. 148).

*XVI.—Crimes and Offences not cognizable if committed more than three Years before Order for Court-Martial, except in cases of manifest Impediment, or a Report has been made to the Court of Directors, when they may be tried within five Years.*

Provided always (sec. lxxi.), That no person shall be liable to be tried and punished for any offence against the said act of the 27 Geo. II, or this act, or the arts. of war made or to be made by virtue of the same acts, or either of them, which shall appear to have been committed *more* than three years before the issuing of the commission or warrant (61), for such trial; unless the person accused, by reason of his having absented himself, or of some other manifest impediment, (62) shall not have been amenable to justice within that period, in which case such person shall be liable to be tried under such commission or warrant, to be issued at any time not exceeding two years after the impediment shall have ceased; (63) or unless the conduct of the person accused shall have been submitted to the consideration of the Court of Directors, by the Gov. gen. or Gov. in council of the presidency to which such person shall belong, in which case such person shall be liable to be tried under such commission or warrant, to be issued at any time not exceeding five years after his offence shall have been committed.—(Ann. M. A. 1824, sec. 157.)

*XVII.—Regulations and Orders, though not provided for by former Acts, to be in Force till this Act be published.*

And be it further (sec. lxxii.) enacted and declared, That all *regulations* and *orders* made respecting the administration of justice by cts. mar., or in any manner respecting the *government, economy, or discipline* of officers or soldiers and followers of the army, of the said United Co., although not expressly provided for in the said act, passed in the 27th

Geo. II., cap. 9, and acted upon by the govts. or mil. authorities at the several presidencies of Ft. Wm., Ft. St. Geo., and Bombay, are and shall be to all intents or purposes valid, and shall continue valid until this act shall be published and in force (64); and all acts or proceedings done or had under such orders or regulations are hereby ratified and confirmed.

**XVIII.—***Seamen employed in the Navy in the East-Indies or St. Helena, and non-commissioned Officers and Privates serving there, either in his Majesty's Forces or in the East-India Company's Service, may receive single Letters free from Postage, except the Payment of one Penny for each Letter, in putting it into the Post-Office; and may send Letters, the Party receiving them paying two Pence for Sea Postage, and one Penny for Inland Postage.*

Be it therefore enacted (sec. lxxiii), That from and after the passing of this act (65), it shall and may be lawful to and for every seaman employed in H. M.'s navy within any part of the East-Indies, or at the island of St. Helena, and to and for every serjt., corpl., drummer, trumpeter, fifer, and private soldier, in H. M.'s regular forces, militia, fencible regts., artillery, or royal marines, whilst actually employed in H. M.'s service in the East-Indies, or at the island of St. Helena, and also to and for every serjt. corpl., drummer, trumpeter, fifer, and private soldier in the service of the said Co., whilst actually employed in the service of the said Co., and not otherwise, to receive single letters (66) by the post, on his own private concerns only, free from all postage, except the sum of one penny for each single letter, to be paid upon putting the same into any post-office in Great Britain or Ireland, provided that the several regulations and restrictions contained in the herein-before recited act, shall have been complied with; and likewise to send by the post, on his own private concerns alone, single letters, upon payment, by the party receiving the same, of the sum of two pence for the sea postage of each such letter, and of the aforesaid further sum of one penny for the inland postage of each such letter, making in the whole the sum of three pence for each such letter; provided that if any such letter shall be delivered into one of H. M.'s post-offices in Great Britain or Ireland, free of all expence to H. M. or the revenue of the post-office (67), such letter shall be chargeable with the inland postage of one penny as aforesaid, and to no other charge; provided also, that the several regulations and restrictions contained in the said herein-before recited act shall have been complied with.



**XIX.—*Commencement of the Act* (68).**

And be it further enacted (sec. lxxiv), That this act shall commence and take effect from and after the 1st day of February 1824, except where any other commencement is particularly directed (69) ; and that from and after such day, all powers and provisions contained in the said act of the 27th Geo. II. shall cease and determine, and that the said act shall be and is hereby repealed, except so far as is hereinbefore provided in that behalf (70) ; and the whole of the said act of the 1st Geo. III. shall be and is hereby repealed (71).

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## **EXTRACTS FROM CHARTER ACT, 1833**

### **Section 39.**

The superintendence, direction, control of the whole civil and military government of all the said territories and revenues in India shall be and is hereby vested in a governor-general and councillors, to be styled "The Governor-General of India in Council.

### **Section 73**

...it is lawful for the said Governor-General in Council from time to time to make articles of war for the government of the native officers and soldiers in the military service of the Company, and for the administration of justice by courts-martial to be holden on such officers and soldiers, and such articles of war shall be made and taken notice of in the same manner as all other the laws and regulations to be made by the said Governor-General in Council under this Act, and shall prevail and be in force, and shall be of exclusive authority over all the native officers and soldiers in the said military service, to whatever presidency such officers and soldiers may belong, or wheresoever they may be serving:

Provided nevertheless, that until such articles of war shall be made by the said Governor-General in Council, any articles of war for or relating to the government of the Company's native forces, which at the time of this Act coming into operation shall be in force and use in any part of parts of the said territories, shall remain in force.

COURTS MARTIAL.

ACT No. XXIII. OF 1839.

*[Passed on the 23rd September, 1839.]*

In all cases in which Court Martial may sentence Soldiers of the Native Army to dismissal, such Soldier may be sentenced to be imprisoned not exceeding two years, if sentenced by General Court Martial; not exceeding six months if sentenced by Regimental or Detachment Court Martial, and after imprisonment, such Soldier may be dismissed.

Repealed by Act XXIX., 1861, s. 1.

# COURTS MARTIAL.

ACT No. II. OF 1840.

*[Passed on the 10th February, 1840.]*

Judge, Magistrate, Sheriff or other Officer in charge of Gaol, to give effect to sentences of Courts Martial, on delivery of the Offender with a Copy of his sentence.

An Act for regulating the execution of sentences of imprisonment passed by Courts Martial in certain cases.

Repealed by Act XXIX., 1861.

## COURTS MARTIAL.

ACT No. XXVIII. OF 1841.

*[Passed on the 15th November, 1841.]*

Offender not being a Commissioned Officer, to be amenable to Articles of War for Native forces, as Soldiers are under Act XXIII., 1839.

An Act for extending Act No. XXIII. of 1839, to Camp Followers.

Repealed by Act XXIX., 1861, s. 1.

## AN ACT

*Providing Articles of War for the government of the Native Officers and Soldiers in the Military Service of the East India Company.*

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WHEREAS by an Act passed in the third and fourth years of the reign of His Majesty King William the Fourth, intituled an Act for effecting an arrangement with the East India Company and for the better government of His Majesty's Indian Territories till the Thirtieth day of April, One Thousand Eight Hundred and Fifty-four, it was amongst other things enacted, that it would be lawful for the Governor General of India in Council, from time to time, to make Articles of War for the government of the Native Officers and Soldiers in the Military Service of the Company, and for the administration of justice by Courts Martial to be holden on such Officers and Soldiers, and such Articles of War from time to time to repeal or vary and amend, and that such Articles of War should be made and taken notice of in the same manner as all other the Laws and Regulations to be made by the said Governor

General under the said Act, and should prevail and be in force and should be of exclusive authority over all the Native Officers and Soldiers in the said Military Service, to whatever Presidency such Officers and Soldiers might belong or where-sover they might be serving : provided nevertheless that until such Articles of War should be made by the said Governor General in Council, any Articles of War for or relating to the government of the Company's Native Forces, which at the time of the said Act coming into operation should be in force and use in any part or parts of the Territories under the Government of the said Company should remain in force.

It is hereby enacted, in pursuance of the above recited authority, that the following Articles of War shall, from after the Seventh day of October, 1845, be the Articles of War for the government of the said Native Officers and Soldiers in the Military Service of the said Company, and for the administration of justice by Courts Martial to be holden on such Officers and Soldiers.



# ARTICLES OF WAR..

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## SECTION I

### *Of Inlisting and Discharges.*

ART. 1. Every Recruit, prior to being enrolled in his Regiment, shall have the First Four Articles of the Second Section of these Articles of War read and explained to him, after which such Declaration as is now used, if any, in the respective Presidencies, shall be made to him by the Officer Commanding, in front of the Regiment or Corps, in presence of the Native Officers and Soldiers, and an oath or declaration shall then be required from him, according to the forms of his religion, such oath and declaration to be the like as are now used in the respective Presidencies.

\* ART. 2. No Commissioned Officer shall be dismissed except by the Sentence of a General Court Martial. No Non-Commissioned Officer or Soldier shall be discharged as a punishment except by the Sentence of a Court Martial, or by order of the Commander in Chief at the Presidency to which they may belong. Every such dismissal or  
discharge

discharge shall include forfeiture of all claim to pension. Provided that no Sentence of discharge awarded by a Court Martial inferior to General shall be carried into effect without the concurrence of the Commander in Chief, or the General or other Officer Commanding the Division, Field Force, District or Brigade, in which the Prisoner may be serving. Provided also, that the Governor General in Council in his executive capacity, and the Governor in Council of any Presidency to which a Commissioned or Non-Commissioned Officer or Soldier may belong, shall have power to order his dismissal or discharge.

ART. 3. All Non-Commissioned Officers and Soldiers discharged the Service, shall be furnished by the Commanding Officer of the Regiment with a Discharge Certificate, made out in the Vernacular Language of the individual discharged, with an English Translation, expressing the authority for, and cause of, such discharge, and the period of his entire Service in the Army.

\*ART. 4. No Non-Commissioned Officer or Soldier shall enlist himself in any other Regiment without a regular discharge from his former Regiment, under the penalty of being reputed a Deserter, and suffering accordingly.

## SECTION II.

### CRIMES AND PUNISHMENTS.

*Crimes punishable with death, transportation, corporal punishment, imprisonment or dismissal.*

ART. 5. Any Officer, or Soldier, who shall begin, excite, cause, or join in any Mutiny or Sedition in the Regiment or Corps to which he belongs, or in any other Corps or Regiment whatsoever, on any pretence whatever; or who, being present at any Mutiny or Sedition, shall not use his utmost endeavours to suppress it ; or who, coming to the knowledge of any Mutiny, intended Mutiny, or concealed combination against the State, shall not without delay give information thereof to his Commanding Officer ; — or

ART. 6. Who shall strike his Superior Officer, or shall draw or offer to draw, or lift up any weapon, or use or offer any violence, against him ; whether on or off duty, and under all circumstances in which his Superior Officer may be distinguishable as such in any manner ; — or

ART. 7. Who shall disobey any lawful Command of his Superior Officer ; — or

ART. 8. Who shall desert from the East  
India

India Company's Service (whether or not he shall re-enter or re-enlist in the same ; )  
 ———or

ART. 9. Who being a Sentry, in time of War or alarm, shall sleep upon his post, or shall leave it before regularly relieved or without leave; ———or

ART. 10. Who shall shamefully abandon or deliver up any Garrison, Fortress, Post or Guard, committed to his charge, or which it was his duty to defend ; or who shall use means to induce any other Officer or Soldier, so to abandon or deliver up any such Garrison, Fortress, Post or Guard ;——— or

ART. 11. Who shall treacherously make known the watch-word to any person not entitled to receive it, according to the Rules and Discipline of War ;——— or

ART. 12. Who shall hold correspondence with or give intelligence to the Enemy or any person in arms against the State, either directly or indirectly ; or who, coming to the knowledge of such correspondence or communication, shall not discover it immediately to the Commanding Officer;——— or

ART. 13. Who shall directly or indirectly assist or relieve the Enemy, or persons in arms against the State, with money, victuals or ammunition ; or shall knowingly harbour or protect any Enemy or person in arms against the State ;——— or

ART. 14.

ART. 14. Who shall treacherously release, wilfully aid, or connive at the escape of any Enemy or Person in arms against the State : placed as a Prisoner under his charge ; ——— or

ART. 15. Who shall misbehave himself before the Enemy, or persons in arms against whom he is led, or use means to induce others so to misbehave ; ——— or

ART. 16. Who shall in presence of an Enemy, or of persons in arms against whom he is led, shamefully cast away his arms or ammunition ; ——— or

ART. 17. Who shall leave his Commanding Officer, or his Post, or Colours, or Party, in time of action, to go in search of Plunder ; ——— or

ART. 18. Who in time of War shall do violence to any person bringing provisions or other necessaries to the Camp or Quarters of the Forces ; or shall force a Safeguard ; or break into any house, or other place for Plunder ; or plunder fields or gardens or other property ; ——— or

ART. 19. Who in time of War shall by discharging Fire Arms, drawing swords, beating drums, making signals, using words, or by any means whatever, intentionally occasion false alarms, in Action, Camp, Garrison or Quarters; ——— or

ART. 20.

ART. 20. Who shall without proper authority release any State Prisoner, or through carelessness or neglect should suffer any such Prisoner to escape ; — or

ART. 21. Who, being a Sentry placed over any State Prisoner, or over Treasure, or over a Magazine or Dock Yard, shall quit his Post without being regularly relieved or without leave, or shall sleep upon his Post; —

Shall, if an Officer, on conviction, suffer Death, or Transportation for life, or be dismissed the service.

And, if a Soldier, shall, on conviction, suffer Death or Transportation for life; or imprisonment with or without hard labour, for life or for any term of years ; and with or without solitary confinement for any portion or portions of the term of imprisonment, not exceeding twenty-eight days at a time, nor eighty-four days in any one year, with intervals between the periods of solitary confinement of not less duration than such periods of solitary confinement ; or shall suffer Corporal Punishment ; or dismissal from the service; as by a General Court Martial shall be awarded.

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*Crimes not punishable with Death or Transportation.*

ART. 22. Any Officer or Soldier who shall in operations in the field, spread Reports by  
Words



Words or Letters calculated to create unnecessary alarm in the Troops, or in the vicinity or in rear of the Army ; — or

ART. 23. Who shall, in Action or previously to going into Action, use Words tending to create Alarm or Despondency ; — or

ART. 24. Who shall be Drunk when on or for duty or on Parade or on the Line of March ; — or

ART. 25. Any Soldier who shall be grossly insubordinate or insolent in the Ranks ; or grossly insubordinate and violent in the presence of a Court Martial,

Shall, if an Officer, on conviction, be Sentenced to be Dismissed the Service, or to be Suspended from Rank and Pay and Allowances;

And, if a Soldier, shall on conviction before a General or District or Garrison Court Martial, be Sentenced to suffer such punishment as a General or District or Garrison Court Martial is by these Articles of War respectively empowered to award.

Provided, that such Offender shall not be Sentenced to Death, or Transportation or Imprisonment with Hard Labour.

ART. 26. Any Officer who shall behave in a manner unbecoming the character of an Officer ; (the fact or facts whereon the charge

charge is grounded being clearly specified therein;) ——or

ART. 27. Any Officer or Soldier, who being under arrest or in confinement, shall leave his arrest or confinement before he is set at liberty by competent authority ; ——or

ART. 28. Who shall advise or persuade any other Officer or Soldier to desert, or who shall connive at such desertion ; or who shall knowingly receive and entertain any Deserter, and shall not immediately on discovery give notice to his Superior Officer ; or shall not cause such Deserter to be apprehended by the Civil Power ; —— or

ART. 29. Who shall obtain or attempt to obtain for himself, or for any Officer or Soldier, or for any other person whatsoever, any Pension or Allowance, by any false Statement, Certificate, or Document, or by the omission of the true Statement or Certificate or Document ; —— or

ART. 30. Who shall knowingly make a false Return or Report, to any his Superior Officer authorized to call for a Return or Report, of the state of the men under his Command, or of Arms, Ammunition, Clothing or other Stores thereunto belonging, or of which he may have charge ; —— or

ART. 31. Who shall malingering, feign, or intentionally produce disease or infirmity:  
or

or intentionally delay his cure ; or intentionally aggravate his disease or infirmity ;  
—— or

ART. 32. Who, at any post, or on the march, shall illegally and against the will of the parties extort money or property of any description, as fees or duties, or on any pretence whatever ; or shall, without authority, exact from Villagers or others, carriage, portorage, or provisions ; —— or

ART. 33. Who shall wantonly and intentionally defile any place dedicated to religious worship, or shall wantonly and intentionally insult the religious prejudices of other persons ; —— or

ART. 34. Who shall, without orders, commit any waste, or spoil, or plunder, or shall injure or destroy any property ; —— or

ART. 35. Any Soldier who shall, contrary to orders, when off duty, appear in or about Camp or Cantonments, or on occasion of visiting Towns or Bazars, carrying a sword, a bludgeon, or other weapon ; —— or

ART. 36. Who shall sell, pawn, or designedly, or through neglect, lose or injure his horse, arms, clothes, accoutrements, or Regimental necessities ; or any of the above articles entrusted or belonging to any other Soldier ; ——

Shall, if an Officer, on conviction, be  
sentenced

sentenced to be Dismissed the Service, or to be Suspended from Rank and Pay and Allowances.

And, if a Soldier, shall, on conviction before a General, District or Garrison Court Martial, be sentenced to suffer such punishment as a General or District or Garrison Court Martial is by these Articles of War respectively empowered to award.

Provided that such Offender shall not be sentenced to Death, or Transportation, or Corporal Punishment.

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*Crimes punishable with Fine or loss of Pay,  
in addition to other Punishments.*

ART. 37. Any Officer or Soldier, who shall embezzle or fraudulently missapply any money entrusted to him on the public account, or for any Military purpose ; or any Provisions, Forage, Arms, Clothing, Ammunition, or Military Stores, of whatever kind or description, the property of Government, entrusted to his charge ; or who shall wilfully spoil such property or suffer it to be spoiled, or shall be concerned in or connive at any such embezzlement, or fraudulent misapplication ; —

Shall, on conviction before a General Court Martial, be dismissed the service and fined to the extent of his arrears of Pay and Allowances ;

Allowances ; and be further liable to suffer imprisonment with or without hard labour for a term which may extend to three years, and with or without solitary confinement to be regulated as aforesaid.

ART. 38. Any Soldier who shall be guilty of *disgraceful conduct* ;

In wilfully maiming or injuring himself, or any other Soldier at the instance of such Soldier, with intent to render himself or such Soldier unfit for the Service, or with intent to take his own life ; — or

ART. 39. In purloining or selling Government Stores ; — or

ART. 40. In stealing money or goods, the property of a Soldier, or of a Military Officer, or of any Military Mess, or of any person or persons belonging to or serving with or attached to the Army ; — or

ART. 41. In embezzling or fraudulently misapplying public money entrusted to him for any Military purpose ; — or

ART. 42. In committing any petty offence of a fraudulent nature, to the injury of or with intent to injure any person, Civil or Military ; — or

ART. 43. Who shall be guilty of any other *disgraceful conduct*, being of a cruel, indegent, or unnatural kind ;

Shall

Shall, on conviction before a General or District or Garrison Court Martial, be liable to suffer such punishments as any such Courts are by these Articles of War respectively empowered to award for *disgraceful conduct*.

And every such offender shall, if not dismissed the service, further be put under stoppages, by sentence of the Court, not exceeding half of his monthly Pay and Allowances ; until the amount be made good of any loss or damage arising out of his misconduct.

And if such offender shall be dismissed the service he shall further be sentenced to forfeit his arrears of Pay and Allowances due at the time of his discharge or in such proportion as may be required to make good such loss or damage.

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*Crimes not Punishable with Corporal Punishment or Imprisonment with Labour.*

ART. 44. Any Officer or Non-Commissioned Officer who shall strike or otherwise illtreat any Soldier ; — or

ART. 45. Any Sentry who in time of peace shall sleep upon his Post, or shall leave it before regularly relieved or without leave ; — or

ART. 46. Any Officer or Soldier, who shall knowingly



knowingly enlist a Deserter, or connive at his enlistment ; — or

ART. 47. Who directly or indirectly shall require or accept a bribe, present or gratification, on the pretence of or as a consideration for procuring leave of absence, promotion, or any other advantage or indulgence for any Officer or Soldier ; — or

ART. 48. Who being in Command at any Post, or on the march, on complaint made to him of any person under his command beating or otherwise illtreating any person ; or extorting from him more than he is obliged to furnish by authority ; or disturbing fairs or markets, or committing any kind of riot ; shall not see reparation done to the party or parties injured ; or, if that be impracticable, shall not report the same to his Superior Officer ; — or

ART. 49. Who being in Command of a Guard, shall refuse to receive any prisoner duly committed to his charge ; or shall without proper authority release any prisoner, or shall suffer, through carelessness or neglect, any prisoner to escape ; — or

ART. 50. Who shall quit his Guard or Picquet in time of peace, without being regularly relieved, or without leave ; — or

ART. 51. Who shall impede the Provost Marshal, or his Assistants, or any other Officer or person legally exercising authority:—

ity :—or refuse to assist him when requiring his aid in the execution of his duty —

ART. 52. Who, being on leave of absence, shall have received information from the Head Quarters of his Regiment, or from other competent authority, that his Regiment has been ordered on service, and shall not rejoin without delay ; — or

ART. 53. Who in time of peace shall, by discharging fire arms, drawing swords, beating drums, or by any other means whatever, intentionally occasion false alarms in Camp, Garrison or Cantonments ; — or

ART. 54. Who shall fail to repair at the time fixed to the parade, or place appointed, for exercise or duty if not prevented by sickness or some other sufficient cause ; — or

ART. 55. Who shall, without urgent necessity, or without leave of his superior Officer, quit his Company or Troop or the Parade ; — or

ART. 56. Who shall absent himself without leave ; or shall, without sufficient cause, overstay the period for which leave may have been granted him ; — or

ART. 57. Any Soldier who shall be found two miles from the Camp contrary to orders ; — or

ART. 58. Who shall, contrary to orders, be

be absent from his Cantonment after tattoo, or from Camp after retreat beating ; — or

ART. 59. Who shall sell, lose, or designedly, or through neglect, waste the ammunition delivered out to him ; —

Shall, if an Officer, on conviction, be sentenced to suspension from Rank and Pay and Allowances ; or to be Reprimanded in such manner as the Commander in Chief may direct;

And, if a Soldier, shall, on conviction before a General or District or Garrison or Regimental Court Martial, be sentenced to suffer such punishment as any such Courts Martial are by these Articles of War respectively empowered to award;

Provided that such offender shall not be liable to be sentenced to suffer Corporal Punishment or Imprisonment with Hard Labour.

ART. 60. All crimes not capital, and all disorders or neglects which Officers or Soldiers may be guilty of, to the prejudice of good order and Military discipline, though not specified in these Articles are to be taken cognizance of by Court Martial, and to be punished according to the nature and degree of the offence, by the Sentence of a General, or District, or Garrison or Regimental Court Martial ; provided that a Soldier shall not for any such offences be liable to be sentenced  
to

to suffer Corporal Punishment or Imprisonment with Hard Labour.

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*Crimes incident to Courts Martial.*

ART. 61. Any person amenable to these Articles of War, who, when duly summoned before a Court Martial, shall not attend, or shall refuse to be sworn, or to make affirmation, or to answer any lawful question ; or who shall induce any other person so to offend ;

Shall be punished according to the Sentence of the same or another Court Martial, with Dismissal or Suspension from Rank and Pay and Allowances, if a Commissioned Officer ; with Dismissal or reduction to the ranks if a Non-Commissioned Officer ; or with Dismissal or imprisonment, if a Soldier ;

Provided that such person, being a Commissioned Officer, shall not be liable to be punished by any but a General Court Martial ; and that no offender punished under the provision of this Article of War shall be sentenced to suffer Imprisonment with hard labour or Corporal Punishment.

ART. 62. Any person not amenable to these Articles of War, who, having been summoned upon any Court Martial, shall refuse or neglect to attend, or who attending shall refuse to be sworn, or to make affirmation,

tion, or to answer any lawful question, or shall give such testimony as, if given in a Criminal Court, would render him guilty of perjury ; or who shall induce any other person so to offend ; ——

Shall be delivered to a Magistrate to be proceeded against according to law.

ART. 63. Any person using menacing or disrespectful words, signs, or gestures, in the presence of a Court Martial then sitting, or causing any disorder or riot so as to disturb their proceedings ; ——

Shall be punished according to the condition of the offender and the nature and degree of his offence, by the sentence of the same or another Court Martial, if he be amenable to these Articles of War ; provided that such offender shall not be liable to be sentenced to Corporal Punishment or to Imprisonment with hard labour ; And if not amenable to these Articles of War, the offender shall be delivered over to a Magistrate to be proceeded against according to law.

ART. 64. Any Officer, or Soldier, who shall be found guilty of wilfully and knowingly giving false evidence on oath or affirmation on any trial before any General or other Court Martial, or any Military Court entitled to administer an oath ; or of inducing any other person so to offend ; ——  
Shall

Shall be dismissed the service, and shall be further subject to fine to the amount of his arrears of Pay and Allowances, or to imprisonment which may extend to three years ;—according to the Sentence of a General or District or Garrison Court Martial.

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*Crimes admitting of less serious notice.*

ART. 65. Whereas it may be advisable that some of the offences which by the foregoing Articles are directed to be tried by a General, or District, or Garrison Court Martial, should, in certain cases which admit of less serious notice, be tried by District, or Garrison, or Regimental Courts Martial respectively,—in such cases the Officer Commanding the Regiment or Corps to which the offender belongs shall lay a particular statement of the case before the General or other Officer having authority to convene General, or District, or Garrison Courts Martial, under whose command such offender may be serving, with an application so to proceed ; and such General or other Officer will exercise his discretion in complying or not with such application ; but the permission of such General or other Officer so to proceed, shall be entered upon the proceedings at the trial of such offender.

Provided that MUTINY shall not be considered one of the offences admitting of such discretionary investigation.

And



And that in cases where offences designated "Disgraceful Conduct" in these Articles of War, and admitting of less serious notice, shall be permitted to be tried by Regimental Courts Martial, the term Disgraceful Conduct shall be omitted in the Charge.

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*Offences on the Line of March or on board Vessels.*

ART. 66. For offences committed on the Line of March, or on board any Ship or other vessel, the Officer in Command of the Troops is hereby authorized to try any Soldier by a Regimental or Detachment Court Martial, and to confirm and execute the Sentence and in all cases of Mutiny or Gross Insubordination to carry the Sentence into execution on the spot ; —

Provided that such Sentence shall in no case exceed that which a Regimental Court Martial is competent to award ;—and that the proceedings held in all such cases shall be specially reported for the information of the Commander in Chief.

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SECTION III.

ADMINISTRATION OF JUSTICE.

ART. 67. Whenever any Officer or Soldier shall commit a crime deserving punishment  
by

by Court Martial, he shall, by his Commanding Officer, be put under arrest, if an Officer ; or if a Soldier, be confined ; until he shall be either tried by a Court Martial, or shall be lawfully discharged by a proper authority; and no Officer or Soldier who shall be put in such arrest or confinement shall continue in his confinement longer than may be actually unavoidable.

And such process of arrest or confinement or an attempt to effect such process, shall in no case be omitted where it may be practicable ;—but where resistance may be made, or from other circumstances such process may be impracticable, the offender or offenders shall be liable to trial and punishment at any subsequent period, within the limitations provided in these Articles of War.

ART. 68. No person shall be liable to be tried or punished for any offence against these Articles, which shall appear to have been committed *more than three years* previous to the order directing the assembly of the Court Martial whereby he is to be tried, unless the person accused, by reason of his absenting himself, or some other manifest impediment, shall not have been amenable to justice within that period ; in which case such person shall be liable to be tried, at any time not exceeding *two years* after the impediment shall have ceased.

ART. 69. Any person amenable to these Articles of War, who may commit any offence  
against

against the same, may be tried and punished for such offence in any place within the British Territories, or elsewhere, where he may have come after the commission of the offence, in the same manner as if the offence had been committed where such trial shall take place.

ART. 70. The Commander in Chief at the Presidencies of Fort William, Fort Saint George and Bombay respectively for the time being, may appoint General or other Courts Martial, and confirm and mitigate or remit the Sentences of such Courts ; and may issue his Warrant to any General or other Officer having the Command of a Body of Troops in the service of Her Majesty or of the East India Company, empowering such Officer to appoint General or District or Garrison Courts Martial as occasion may require, for the trial of offences committed by any of the Officers or Soldiers or Followers in the service of the said Company, being Natives of the East Indies, or of other places within the limits of the said Company's Charter, and to confirm and mitigate, or remit the Sentences of such Courts Martial.

ART. 71. A General Court Martial shall not consist of less than *thirteen* Commissioned Officers, unless it be held out of the East India Company's Territories, where such Court Martial may consist of *seven* Commissioned Officers, if a greater number cannot be conveniently assembled. And no  
sentence

sentence of a General Court Martial shall be put in execution until after a report shall have been made of the whole proceedings to the Commander in Chief, or to some other person duly authorized to confirm the same, and until his direction shall have been signified thereupon.

*Powers of a General Court Martial.*

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\* ART. 72. A General Court Martial may sentence any Officer or Soldier to Death or Transportation, for any crimes which are by these Articles of War expressly made liable to sentence of Death or Transportation, and for such crimes only.

And when a Commissioned Officer shall be convicted of any offence, of which the punishment is not defined in these Articles of War, or is left discretionary, a General Court Martial may adjudge such Officer to be dismissed the service ;—to be suspended from rank and pay and allowances, for a stated period ;—or to be placed lower on the list of his rank, by an alteration of the date of his Commission, thereby losing the corresponding benefit of length of service; and the Court shall in every such sentence specify the extent or degree of suspension or reduction, which they shall so adjudge ;—or the Court may sentence such Officer to be reprimanded in such manner as the Commander in Chief may direct.

And

And a General Court Martial may sentence any Non-Commissioned Officer to be reduced to the ranks ;—or may sentence any Non-Commissioned Officer or Soldier to be dismissed the service ;— or to be placed lower in the list of the rank which he holds ; —or may sentence any Soldier to suffer Corporal Punishment not exceeding *Two Hundred Lashes* ;—or Imprisonment with or without hard labour not exceeding *two years* ;—and to be kept in solitary confinement for any portion or portions of such Imprisonment, not exceeding twenty-eight days at a time, nor eighty-four days in any one year, with intervals between the periods of solitary confinement, of not less duration than such periods of solitary confinement.

And a General Court Martial may, in addition either to Corporal Punishment or to Imprisonment as aforesaid, sentence a Soldier to forfeiture of all advantage as to additional Pay and to Pension on discharge, which might have otherwise accrued from the length or nature of his former service ; or to forfeiture of such advantage absolutely, whether it might have accrued from past service, or might accrue from future service, according to the nature of the case, for *disgraceful conduct*.

And a General Court Martial may, in addition to the punishment of dismissal, sentence any Officer or Soldier to forfeit his arrears of Pay and Allowances due at the time

time of his discharge, or such proportion thereof as may be required, to make good any loss or damage arising out of his misconduct ;—And in addition to any punishment not involving dismissal from the service, may sentence any Officer or Soldier to be put under stoppages not exceeding two-thirds of his Pay and Allowances in the case of an Officer, and not exceeding half of his Pay and Allowances in the case of a Non-Commissioned Officer or Soldier, until the amount of such loss or damage be made good.

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*Confirmation and Commutation of Sentence,  
by the Commander in Chief.*

ART. 73. In cases wherein a Sentence of *Death* shall have been awarded by a General Court Martial, for any offence against discipline for which Sentence of *Death* is awardable under these Articles of War, the Commander in Chief may confirm such Sentence and cause it to be carried into effect, or may, instead of causing such Sentence to be carried into effect, order the offender, if an Officer, to be Transported for life, or to be dismissed, and if a Soldier to be Transported for life, or to be Imprisoned with or without Hard Labour either for life, or for a certain term of years, and with or without Solitary Confinement, to be regulated as aforesaid, as to the Commander in Chief may seem meet.

In



In cases of Commissioned Officers Sentenced to *Transportation*, the Commander in Chief may in lieu thereof order the offender to be dismissed. And in cases of Commissioned Officers Sentenced to be *Dismissed* from the service, the Commander in Chief may, in lieu of such Punishment direct, that the offender be suspended from Rank and Pay and Allowances for a certain period, to be distinctly specified by the Commander in Chief.

And the Commander in Chief may commute a Sentence of *Transportation* passed on a Soldier, to Imprisonment with or without Hard Labour, and with or without Solitary Confinement to be regulated as aforesaid ; and such Imprisonment may be either for the same period for which *Transportation* shall have been awarded, or for any lesser period.

And the Commander in Chief may commute a Sentence of *Corporal Punishment* to Dismissal from the service ; or, in the case of a Non-Commissioned Officer may mitigate such Sentence to reduction to the ranks ; or in the case of a Non-Commissioned Officer or Soldier may commute such Sentence to Imprisonment without Hard Labour, and with or without Solitary Confinement (to be regulated as aforesaid), for any period not exceeding *two years*, if the Sentence shall exceed *one hundred and fifty lashes* ; not exceeding *one year* if it shall exceed *one hundred lashes* ; and not exceeding *six months*

*months* if it shall be *less than one hundred lashes* ;—but the term of such commuted Imprisonment may be for any lesser periods respectively, at the discretion of the Commander in Chief.

In cases of Non-Commissioned Officers Sentenced to be *Dismissed* from the service, the Commander in Chief may, in lieu of such punishment, direct that the offender be reduced to the ranks, or placed lower in the list of the rank which he holds.

And in cases of offenders Sentenced to *Imprisonment with Hard Labour*, the Commander in Chief may mitigate such Sentence by causing the offender to be reduced to the ranks, in the case of a Non-Commissioned Officer ; or in the case of a Non-Commissioned Officer or Soldier by directing that he be dismissed from the service ; or suffer Imprisonment without Hard Labour, and with or without Solitary Confinement, (to be regulated as aforesaid), for any period not exceeding that for which he shall have been Sentenced to such Imprisonment with Hard Labour.

ART. 74. A District or Garrison Court Martial shall consist of not less than *Seven* Commissioned Officers, except in situations where that number cannot be conveniently assembled, when such Court may consist of not less than *Five* Commissioned Officers. And such District or Garrison Court Martial may

may be composed of Officers of the same Regiment, and shall be assembled in conformity with the orders of the Commander in Chief.

And the Sentence of a District or Garrison Court Martial shall be confirmed by the Commander in Chief, or by some Officer duly authorized to confirm the same.

*Commutation of Sentence.*

And the Commander in Chief is empowered to remit or mitigate or commute the Sentences of such Courts Martial, in the same manner as the Sentences of General Courts Martial; and to delegate or withhold the power to Commanding Officers of convening such Courts Martial, and of confirming and remitting, mitigating or commuting the Sentences of such Courts, (*not including forfeiture of Pay or Pension or other advantage*), as the Commander in Chief may deem to be most expedient.

And in case of any Sentence, including forfeiture of additional Pay or of Pension on Discharge, or of any prospective advantage, such Sentence shall not be carried into effect until confirmed by the Commander in Chief; and all forfeitures of any present or prospective advantage shall be restorable by the same authority.

*Powers*

*Powers of a District or Garrison Court Martial.*

**\*ART. 75.** A District or Garrison Court Martial may Sentence any Non-Commissioned Officer to be reduced to the ranks,— or may Sentence any Non-Commissioned Officer or Soldier to be dismissed from the Service ; or to be placed lower in the list of the rank which he holds ; or may Sentence any Soldier to suffer Corporal Punishment not exceeding *one hundred and fifty lashes* ; or Imprisonment with or without Hard Labour not exceeding *One Year*, and to be kept in Solitary Confinement to be regulated as aforesaid.

And such Court Martial may, in addition either to Corporal Punishment or to Imprisonment as aforesaid, Sentence a Soldier to forfeiture of all advantage as to additional Pay, and to Pension on Discharge, which might have otherwise accrued from the length or nature of his former service, or to forfeiture of such advantage absolutely, whether it might have accrued from past service, or might accrue from future service, according to the nature of the case, for *disgraceful conduct*.

And such Court Martial may, in addition to the punishment of Dismissal, Sentence any Non-Commissioned Officer or Soldier to forfeit his arrears of Pay and Allowances due at the time of his discharge, or such proportion

proportion thereof as may be required to make good any loss or damage arising out of his misconduct ; and in addition to any punishment not involving Dismissal from the service, may Sentence any Non-Commissioned Officer or Soldier to be put under Stoppages not exceeding half of his Pay and Allowances, until the amount of such loss or damage be made good.

ART. 76. A Regimental Court Martial shall consist of not less than *Five* Commissioned Officers, (unless it be found impracticable to assemble that number, when *Three* may be sufficient:) and shall be assembled by order of the Officer Commanding the Regiment. And no Sentence of a Regimental Court Martial shall be of force until the Commanding Officer shall have confirmed the same. Provided that such Commanding Officer shall have power to remit all Sentences whatever passed by such Court, and thereupon to cause the offender to be released and to return to his duty.

#### *Commutation of Sentence.*

And such Commanding Officer shall have power to mitigate all Sentences whatever passed by such Court ; and to commute a Sentence of *Corporal Punishment* to Imprisonment without Hard Labour, and with or without Solitary Confinement, to be regulated as aforesaid, for any period for which such Court

is

is competent to Sentence an offender to suffer Imprisonment and in the same manner ; and to mitigate a Sentence of *Dismissal* in the case of a Non-Commissioned Officer, to Reduction to the Ranks ;—and to commute a Sentence of *Imprisonment with Hard Labour*, or with *Solitary Confinement*, or both, to *Dismissal* ; or to mitigate such Sentence to Reduction to the Ranks ; or to Imprisonment without Hard Labour.

But no Sentence of *Corporal Punishment*, or of *Imprisonment with Hard Labour*, passed by a Regimental Court Martial and confirmed in full by such Commanding Officer, or confirmed and mitigated by him ; and no Sentence of *Dismissal* confirmed, and no commutation of *Dismissal* for *Imprisonment* made as aforesaid, by such Commanding Officer ; shall be carried into effect, without the sanction and authority of the Officer Commanding the Division or Field Force or District or Brigade, (being the Senior Officer on the spot) in which the Regiment may be serving ; who is hereby empowered to cause such Sentence to be inflicted in accordance with the confirmation thereof in full or in mitigated degree by the Officer Commanding the Regiment, or such *Dismissal* to be carried into effect, or to direct the release of the offender and his return to duty as he may deem expedient.

Provided that in detached situations, or when on service in the field, the Officer  
Commanding

Commanding the Regiment shall have power to carry into effect any Sentence of a Regimental Court Martial, in cases where an immediate example is necessary and reference cannot be had to superior authority without detriment to the service.

*Powers of a Regimental Court Martial.*

\* ART. 77. A Regimental Court Martial may Sentence any Non-Commissioned Officer to be reduced to the ranks ;—or may Sentence any Non-Commissioned Officer or Soldier to be dismissed from the service ;—or to be placed lower in the list of the rank which he holds—or may Sentence any Soldier to suffer Corporal Punishment not exceeding *one hundred lashes* ; or Imprisonment, with or without hard labour, for any period not exceeding *six calendar months* ; and to be kept in solitary confinement to be regulated as aforesaid.

Any such Court Martial may, in addition to the punishment of dismissal Sentence any Non-Commissioned Officer or Soldier, to forfeit his arrears of Pay and Allowances due at the time of his discharge, or such proportion thereof as may be required to make good any loss or damage arising out of his misconduct ; and in addition to any punishment not involving dismissal from the Service, may Sentence any Non-Commissioned Officer or Soldier to be put under Stoppages not exceeding half of his Pay and Allowances



Allowances, until the amount of such loss or damage be made good.

ART. 78. An Officer Commanding any Detachment of his own Regiment, may assemble Regimental Detachment Courts Martial ;—and an Officer Commanding a Detachment consisting of men of different Corps, may assemble Detachment or Line Courts Martial ;—and all such Courts shall be constituted in the same manner as Regimental Courts Martial under the provisions of these Articles of War, and shall have the like powers.

And the provisions of these Articles of War relating to Courts Martial held in Regiments, shall be taken to apply to Courts Martial held in Detachments, in all practicable cases.

Provided that no Officer on detached Command of less than four Troops or Companies, or of Detachments numerically equal to four Troops or Companies, shall carry into effect any punishment awarded by a Court Martial held by his order, until the Sentence shall have been confirmed by the Officer Commanding the Regiment to which the offender belongs, or by the nearest superior Officer holding a Command of not less than a Regiment ;—(who is hereby authorized to confirm the same, in like manner, as an Officer Commanding a Regiment is empowered to do, and with the same restrictions :)—Except in cases where an *immediate example* is

is necessary and reference cannot be made to such Commanding or Superior Officer without detriment to the Service.

ART. 79. At all Courts Martial, it shall be competent to the Officer convening the Court to instruct the Court, that, should the Prisoner be found guilty, and Imprisonment form a part of the Sentence, no portion of the Imprisonment should be Solitary ;—or, should Corporal Punishment be awardable to the offender, that it shall not be awarded in the particular case ; and the Court will govern itself accordingly.

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*Execution of Sentences of Courts Martial.*

ART. 80. In every Sentence of death awarded by a General Court Martial, the Court shall specify that the offender shall “suffer death by being hanged by the neck until he be dead,” or “by being shot to death,” as the Court in their discretion shall deem expedient ; and such Sentence if confirmed, shall be carried into effect accordingly.

ART. 81. Whenever the sentence of a General Court Martial shall adjudge transportation, or sentence of death shall be commuted by competent authority to transportation, any of the Sudder Courts shall give effect to such sentence or commuted sentence, on the same being certified to the Court under the authority of the Commander in Chief.

And

And whenever any sentence of a Court Martial shall adjudge imprisonment with labour, or with solitary confinement, or both, or whenever the sentence of a Court Martial shall be commuted to any such imprisonment, it shall be the duty of every Judge, Magistrate, Sheriff, or other Officer in charge of a Jail, to give effect to such sentence, on the offender being delivered into his custody, and on being furnished with a copy of the sentence by the Officer Commanding the Division, Field Force, District or Brigade, within which the trial is held.

ART. 82. Whenever any Soldier shall be sentenced to imprisonment for life, or a sentence of death shall be commuted to imprisonment for life, it shall be lawful for the Commander in Chief to order such offender to be transported beyond sea for life, unless there should be special reasons inducing the Commander in Chief to think such prisoner not a proper subject for transportation.

ART. 83. Persons sentenced to imprisonment by Courts Martial shall be imprisoned in any public prison or in any other fit place which the Commander in Chief shall from time to time direct.

ART. 84. Every Soldier sentenced to imprisonment with hard labour, shall previous to undergoing such punishment be struck off the strength of his Corps from the date of confirmation of such sentence ; and no Soldier who has undergone such punishment  
for

for any period shall be capable of being re-admitted in the ranks, or of receiving pension on discharge.

ART. 85. Offenders sentenced to dismissal for *disgraceful conduct* ;

And offenders subject to Corporal Punishment or to imprisonment with hard labour for *disgraceful conduct* shall, on any such sentence being confirmed, be dismissed with ignominy.

ART. 86. In every case wherein a fine or stoppages shall be adjudged by a Court Martial, any arrears of pay or public money due to the offender, shall be available under an order from the Commander in Chief, for the payment of the amount so adjudged.

And no Soldier sentenced to pay a fine or to stoppages to make good any loss or damage arising out of his misconduct, shall be continued under forfeiture or stoppages under any one such sentence for any period exceeding one year ; and no Soldier shall be at any one time placed under forfeiture or stoppages exceeding in the whole the amount of half of his Pay and Allowances, nor be liable to be put under stoppages prospectively while actually under stoppages to the amount of half of his Pay and Allowances.

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*Forms of Proceeding.*

ART. 87. Trials by Courts Martial may  
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be carried on between the hours of six in the morning and four in the afternoon, and not otherwise, except in cases which may require an immediate example.

ART. 88. At General Courts Martial a Judge Advocate, or an European Officer of not less than ten years service, shall be appointed to conduct the proceedings.

At all Courts Martial inferior to General, an European Officer of not less than four years standing in the service, except in cases where no Officer of that standing may be available, or the Adjutant of the Regiment, shall be appointed to conduct the proceedings.

ART. 89. An Interpreter shall be appointed to all Courts Martial; and any Interpreter available at the Station where the Court Martial may sit shall be appointed as occasion may require by the Officer Commanding at such Station, on application from the Judge Advocate or Superintending Officer at such Court Martial. But in situations where the services of an Interpreter are not available, the Superintending Officer at a Court Martial shall perform the duty of Interpreter.

ART. 90. At all Courts Martial the Senior Officer shall sit as President without being so appointed by Warrant. Provided that all Subadar Majors are to take precedence according to the dates of their Commissions, and above all Native Officers holding the  
rank

rank of Subadar or Jemadar; and that Sirdar Bahadoors and Bahadoors shall rank only according to their respective Commissions of Subadar Major, Subadar, or Jemadar. Rissaldars will take rank with Subadars, and Naib Rissaldars with Jemadars, according to the dates of their respective Commissions.

In case of the death or unavoidable absence of the President, the next Senior Member shall take the place of President, and the trial shall proceed, provided that the Court shall still consist of at least the number of Members of which such Court is directed to consist by these Articles of War.

ART. 91. No Finding or Sentence of a Court Martial shall be revised more than once, and no Evidence shall be received on such revision. For the purpose of such revision the President and all the Members shall be convened if possible. But if any of them should be unavoidably absent, the remaining Members may proceed with such revision, provided they are not fewer than the smallest number directed in these Articles respectively. When all the same Members do not meet, the circumstances are to be duly certified on the face of the proceedings.

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*Manner of Voting.*

ART. 92. All the Members of a Court  
Martial

Martial are to preserve order, and in giving their votes upon all matters are to begin with the youngest ; and in all cases where a sentence of death may not be awarded, the decision shall be by the majority of Members present, provided the number of Members present be not less than that required by the preceeding Articles ; but in case of an equality of votes, the decision shall be in favour of the prisoner ; the President at a Court Martial shall vote with the other Members, but shall have no casting vote. Provided, that in cases of an equality of votes upon other questions than the finding and the sentence, the President shall have a casting vote.

ART. 93. No sentence of death shall be given against any offender by a Court Martial, unless two-thirds of the Members present concur therein, or four where the Court consists of five Members, or five where the Court consists of seven.

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*Affirmations.*

ART. 94. On the assembly of a Court Martial, the Judge Advocate or Superintending European Officer shall administer to the Interpreter the following Solemn Affirmation:

“I, A. B., solemnly affirm in the presence of Almighty God, that I will faithfully interpret and translate the proceedings



“ings of the Court, and that I will not  
“divulge the sentence until it shall have  
“been published by authority ; and further,  
“that I will not disclose or discover the vote  
“or opinion of any particular Member of  
“the Court, unless required to give evidence  
“thereof by a Court of Justice or Court  
“Martial, in due course of Law.”

In case of the unavoidable absence of an Interpreter, the European Superintending Officer of a Court Martial inferior to General, shall make the Solemn Affirmation prescribed for the Interpreter.

The Judge Advocate or Superintending Officer shall then cause the following Solemn Affirmation to be made by each Member :

“I, A. B., solemnly affirm in the presence  
“of Almighty God, that I will duly ad-  
“minister justice according to the Articles  
“of War, without partiality, favour or affec-  
“tion, and, if any doubt shall arise, then,  
“according to my conscience, the best of  
“my understanding, and the custom of War  
“in the like cases, and that I will not  
“divulge the sentence of the Court until it  
“shall be published by authority ; and fur-  
“ther, that I will not disclose or discover  
“the vote or opinion of any particular Mem-  
“ber of the Court, unless required to give  
“evidence thereof by a Court of Justice or a  
“Court Martial in due course of Law.”

The following Solemn Affirmation shall  
then

then be administered by the Interpreter to the Judge Advocate or Superintending Officer :

“ I, A. B., solemnly affirm in the presence  
“ of Almighty God, that I will not upon  
“ any account whatsoever disclose or discover  
“ the vote or opinion of any particular  
“ Member of the Court Martial, unless  
“ required to give evidence thereof as a  
“ witness by a Court of Justice, or a Court  
“ Martial in due course of Law, and that I  
“ will not, unless it be necessary for the due  
“ discharge of my official duties disclose the  
“ sentence of the Court, until it shall be  
“ published by authority.”

Provided, that it shall be necessary to re-administer these Solemn Affirmations on the commencement of fresh trials before the same Court.

ART. 95. All persons who give evidence at a Court Martial are to be examined on Oath according to the forms of their respective religions or on affirmation—and persons of the Hindoo or Mahomedan persuasion shall make Affirmation to the following effect :

“ I solemnly affirm, in the presence of  
“ Almighty God, that what I shall state  
“ shall be the truth, the whole truth, and  
“ nothing but the truth.”

And if any person making such affirmation

tion as aforesaid, shall wilfully and falsely state any matter or thing which if the same had been sworn would have amounted to perjury, every such offender shall be subject to the same punishment to which persons convicted of perjury are subject.

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*Summoning Witnesses not amenable to these Articles.*

ART. 96. In all cases where persons required as witnesses before a Court Martial, may not be amenable to Military Law, the Judge Advocate or Commanding Officer shall transmit to the Magistrate within whose jurisdiction the witness may reside, his summons for the attendance of such person, and the Magistrate shall cause the witness to be duly summoned.

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*Powers and Duties of Provost Marshal.*

ART. 97. For the prompt and instant repression of all irregularities and crimes which may be committed by Troops in the Field and on the Line of March, Provosts Marshal shall be appointed by the Commander in Chief, and their Powers shall be regulated according to the established Usages of War and Rules of the Service ; their Duties are to take charge of Prisoners confined for offences of a general description ; to preserve good Order and Discipline ; to prevent

prevent Breaches of both, by Soldiers and Followers of the Army, and to punish on the spot, on the same day, those whom they may find in the immediate act of committing Breaches of good Order and Military Discipline ; Provided, that the punishment be limited to the necessity of the case, and shall accord with the orders which the Provosts may from time to time receive from the Commander of the Forces in the Field, and whatever may be the crime, the Provost Marshal or his Assistant shall see the offender commit the act, for which summary punishment may be inflicted, or if the Provost Marshal or his Assistants should not see the offender actually commit the crime, but that sufficient proof can be established of the offender's guilt, a Report shall be made to the Commander of the Army in the Field, who is hereby empowered to deal with the case as he may deem most conducive to maintenance of good Order and Military Discipline. The duties of Provosts Marshal being limited to the punishment of offenders whom they may detect in the actual commission of any crime, the general Commanding the Forces in the Field will cause them to exercise the powers entrusted to them in such manner and under such circumstances as he may consider best calculated to prevent and instantly to repress crimes injurious to the Discipline of the East India Company's Army and the Public Service.

*Trials*

*Trials by European Courts Martial.*

ART. 98. At any Presidency where the Native troops have hitherto been authorized to claim to be tried by European Courts Martial, every person amenable to these Articles of War, and who may be under orders for trial by a Court Martial, shall have the right to claim to be tried by European Officers; and should he make such claim, the Court, whether General or District or Regimental, shall be composed of European Commissioned Officers, and the number of Members and the proceedings shall be governed in all respects by the provisions of these Articles.

And it shall be competent to the Governor General of India in Council by a General Order to authorize the Native Troops of any of the Presidencies to claim to be tried in like manner by European Courts Martial.

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## SECTION IV.

## EFFECTS OF THE DEAD.

\*ART. 99. When any Officer or Soldier, or any person receiving public pay drawn by any Officer in charge of a Public Department belonging to the Army, may die, or be killed in the service, the Commanding Officer of the Regiment or Party, or Officer in charge of the Department, shall, if no Heir  
or

or Executor be present, secure his Effects, and direct an inventory thereof to be taken, a duplicate of which is to be lodged in the office of the Adjutant, or Officer in charge of the Department.

\*ART. 100. If there be no Heir or Executor on the spot, the Effects are to be publicly sold; the Commanding Officer of the Regiment, or Party, or Officer in charge of the Department, after Discharging the debts of the deceased, vizt. the expense of Funeral Ceremonies, his Debts in Camp or Quarters, and Regimental Debts of every description, shall account for the residue to the Heir or Heirs declared by Will, whether written or verbal, or nominated in the Regimental Register, or in failure of such to the legal representative of the deceased; and in the event of no Executor, Heir, or other representative of the deceased attending and establishing his claim within twelve months from the date of the casualty, the amount in the hands of the Officer having charge of the Estate, is to be remitted to the General Treasury at the Presidency.

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## SECTION V.

### *Miscellaneous.*

ART. 101. The Effects of Deserters are to be publicly sold, and the proceeds after payment of Regimental Debts, remitted by the Officer Commanding the Corps to which  
the

the Deserter belongs, to the General Treasury at the Presidency.

ART. 102. All powers and provisions contained in these Articles relating to the Commander in Chief, shall be construed to extend to the Commander in Chief at any Presidency, and to the Officer Commanding the Forces for the time being at any Presidency, unless when otherwise provided.

All powers and provisions contained in these Articles relating to Soldiers, shall be construed to extend to Non-Commissioned Officers, unless when otherwise provided.

ART. 103. When any portion of the Troops belonging to one Presidency shall be serving within the limits of another Presidency, such Troops shall be considered as placed, during such service, under the orders and authority of the Commander in Chief, or Commanding Officer of the Forces of the Presidency within which they are serving, for all the purposes of these Articles of War, in the same manner as though they belonged to such Presidency ; and all the provisions of these Articles of War, which relate to the trial and punishment of offenders belonging to the Presidency within which the trial is held, are hereby declared applicable to the trial and punishment of offenders amenable to these Articles of War serving within such Presidency. Provided always that it shall be lawful for the Governor General in Council in his executive capacity, to direct that the  
Troops,



Troops, or any part thereof of any Presidency, whilst serving without the limits of such Presidency shall continue under the orders and authority of the Commander in Chief, or Commanding Officer of the Forces of the Presidency to which they belong, for all purposes of these Articles.

ART. 104. Any Officer Commanding any portion of the East India Company's Troops which may at any time be serving in any place out of Her Majesty's Dominions, or of the Possessions or Territories which are or may be under the Government of the said Company, or of the Territories of those States in alliance with the said Company in which the said Company's Forces are permanently stationed, shall, upon complaint made to him of any offence committed against the property or person of any inhabitant or resident in any such countries, by any person serving with or belonging to the Company's Army, being under the immediate Command of any such Officer, summon and cause to assemble a General Court Martial, which shall consist of not less than three Officers at the least, for the purpose of trying any such person, notwithstanding any such Officer shall not have received any Warrant empowering him to assemble Courts Martial ; and every such Court Martial have the same powers in regard to summoning and examining witnesses, trial of, and sentence upon any such offenders as are granted by these Articles to General Courts Martial ; provided that no sentence

sentence of any such Court Martial shall be executed until the General Commanding in Chief the Army to which the Division, Brigade, Detachment or Party to which any person so tried, convicted and adjudged to suffer punishment shall belong, shall have approved and confirmed the same ; except where such sentence shall not exceed the powers granted by these Articles to a District or Garrison Court Martial, in which case the Officer by whom the Court is convened is hereby authorized to confirm and commute or mitigate or remit the same ; reporting the proceedings to the said General Commanding in Chief.

ART. 105. General Courts Martial only shall have the power to try Commissioned Officers ; or to pass Sentence of Death or Transportation on any offenders.

ART. 106. No person, being acquitted or convicted before a Court Martial of any offence, shall be liable to be tried a second time by the same or any other Court Martial for the same offence. Provided always, that after a Soldier shall have been found guilty by a Court Martial of any military offence, such Court Martial shall inquire into and receive evidence of any previous conviction of such Soldier before a Court Martial or a Court of Justice, and shall inquire into the *general* character of such Soldier ; for the purpose of affixing the punishment to which he is liable to be sentenced for the offence of which he has been so found guilty.

Provided

Provided that no such evidence shall in any case be received until the Court shall have ascertained that such Soldier had previously to his trial received notice of the intention to produce such evidence on the same. And it is hereby directed that such notice shall be given to all Soldiers previous to trial.

\*ART. 107. No Non-Commissioned Officer shall be reduced to the ranks but by the sentence of a Court Martial, or by order of the Commander in Chief of the Presidency to which the offender shall belong. Provided that no Non-Commissioned Officer shall be reduced to the ranks for any limited period; nor suspended from his rank; nor reduced from a higher to a lower grade of Non-Commissioned Officer; nor sentenced to suffer Corporal Punishment or Imprisonment, without being first reduced to the ranks.

\*ART. 108. Any Officer or Soldier thinking himself wronged by his Superior or other Officer, is to complain thereof to the Commanding Officer of his Troop or Company, by whom if the grievance be not redressed, such Officer, Non-Commissioned Officer, or Soldier, may complain to the Commanding Officer of his Regiment, who is hereby required to examine into such complaint, or remit it to his superior authority as the circumstances may require; but if the complaint should appear to be frivolous or groundless, the party preferring it shall be liable to be punished according to the  
the

the sentence of a General or other Court Martial in manner herein before mentioned ; provided that such offender shall not be liable to be sentenced to dismissal nor to suffer Corporal Punishment or Imprisonment with hard labour.

ART. 109. In case of light offences, a Commanding Officer may without the intervention of a Court Martial, award extra drill with or without pack for a period not exceeding fifteen days; restriction to Barrack limits not exceeding fifteen days ; confinement in the Quarter Guard, or Defaulter's Room, not exceeding seven days, removal from Staff situations or acting appointments ; or may order Soldiers to be employed in piling and unpling shot ; and in cleaning accoutrements of men in Hospital; but none of these descriptions of punishment shall be awardable by Sentence of a Court Martial. And a Commanding Officer may award solitary confinement not exceeding seven days.

Provided that Soldiers in confinement shall be liable to be ordered to attend ordinary drill.

ART. 110. Any Officer, or Soldier, who shall be taken prisoner by the Enemy, shall forfeit all claim to pay and allowances during the period of his remaining a prisoner and until he shall again return to the service ; when, if he can establish, before a Court Martial, that he was unavoidably taken prisoner

soner in the course of service, and resisted as long as he was able, and that he hath not served with or assisted the Enemy, and that he hath returned as soon as possible to the service, he shall be entitled to receive either the whole, or such portion of his arrears of pay and allowances as the Government of the Presidency to which he may belong shall determine, after the opinion or finding of such Court Martial shall have been confirmed by the Commander in Chief.

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## SECTION VI

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### *Mode of dealing with offences not Military.*

ART. 111. In all places within the jurisdiction of any Civil Judicature, established by appointment of Her Majesty or of the said Company, Officers and Soldiers accused of capital crimes, or of violence, or of offences against person and property, punishable by such Civil Judicature, shall be delivered over to a Magistrate to be proceeded against according to Law.

And all Officers and Soldiers are hereby required to assist the Officers of Justice in apprehending and securing any person so accused.

*Crimes*

*Crimes to be tried by Courts Martial when  
no regular Criminal tribunals exist.*

ART. 112. In any place within the limits of the Charter of the East India Company, whether in or out of the British Territories, where there may be no Civil Judicature appointed by Her Majesty or the said Company for the trial of persons accused of offences ordinarily cognizable by Civil Tribunals such offences when committed by Officers and Soldiers shall be cognizable by Courts Martial.

ART. 113. General Courts Martial shall have cognizance ordinarily of offences punishable with death.

Transportation for Life.

Imprisonment for Life.

Imprisonment for a period which may extend to 14 years.

Imprisonment for a period which may extend to 7 years.

ART. 114. District or Garrison Courts Martial shall have cognizance ordinarily of offences punishable with imprisonment for a period which may extend to three years and by special order of offences ordinarily cognizable by General Court Martial not liable to the punishment of death or transportation, with power to sentence persons convicted of such offences to imprisonment for any period not exceeding three years.

ART. 115.

ART. 115. Regimental, Detachment or Line Courts Martial shall have cognizance ordinarily of offences punishable with imprisonment for a period not exceeding six calendar months, and by special order of offences ordinarily cognizable by District or Garrison Courts Martial with power to sentence persons convicted of such offences to imprisonment for a period not exceeding six calendar months.

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## GENERAL COURTS MARTIAL.

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### *Punishment of Death.*

ART. 116. Any Officer or Soldier who shall be convicted by a General Court Martial of the crime of "Murder" shall be sentenced to suffer death by being hanged by the neck until he be dead.

If any injury intended against one person shall, through mistake or accident, light upon another person, and kill him, such killing shall be deemed to be murder whensoever it would have been murder had the person against whom such injury was intended been killed.

Whensoever death shall result from any injury wilfully caused by an offender, but without his intending such injury to light  
on



on any person in particular, such offender shall be guilty of murder, if the offence would have been murder had he intended to do the injury to the person killed.

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*Offences punishable by Transportation for Life.*

ART. 117. Any Officer or Soldier who shall be convicted by a General Court Martial of any of the offences hereinafter mentioned, accompanied with an attempt to commit murder, or with wounding or other corporal injury to any person endangering the life of such person ; That is to say,

1st.—Breaking or attempting to break by day or night into any Dwelling House, Tent, Boat or other habitation, or into any building or place used for the preservation of property, with the intent to rob or steal.

2d.—Robbery or attempt to rob.

3d.—Stealing or attempting to steal in a house or from the person :—

Shall be sentenced by such General Court Martial to imprisonment with or without hard labour and transportation for life.

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*Offences punishable by Imprisonment which may extend to 14 years.*

ART. 118. Any Officer or Soldier who shall

shall be convicted by a General Court Martial of any of the offences specified in the last Article, accompanied with wounding or other corporal injury to any person not endangering the life of such person ;——or

ART. 119. Of wounding with intent to murder, whether the person wounded be the person whom the offender intended to murder or another ; —— or

ART. 120. Of Robbery by open violence or Dacoity, that is to say, going forth in the day or in the night with an offensive weapon, or in a gang with or without an offensive weapon, with the intention of committing robbery, and by force or intimidation robbing or attempting to rob any person in a place, or attacking by open violence any house or place of habitation or any place in which property may be kept, for the purpose of robbery ; —— or

ART. 121. Of breaking or attempting to break into any Dwelling House, Tent, Boat or other place of habitation between sunset and sunrise, with intent to rob or steal ; ——or

ART. 122. Of breaking into any such place of habitation or into any place used for the preservation of property, and stealing therefrom property the value of which shall exceed 100 Company's Rupees; —— or

ART. 123

ART. 123. Of purchasing or receiving plundered stolen property knowing to have been obtained by robbery, by open violence, or by theft or robbery aggravated as described in Art. 118 or Art. 119,

Shall be sentenced by such General Court Martial to imprisonment with or without hard labor for a period not exceeding 14 years.

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*Offences punishable by Imprisonment not exceeding 7 years.*

ART. 124. Any Officer or Soldier who shall be convicted by a General Court Martial of culpable homicide not amounting to wilful murder ; — or

ART. 125. Of premeditated affray, attended with Homicide, or severe wounding or other aggravating circumstance ; — or

ART. 126. Of intentionally wounding, maiming or otherwise doing corporal injury to any person ; — or

ART. 127. Of accidentally wounding, maiming or otherwise doing corporal injury to any person with the intention of doing such injury to another person ; — or

ART. 128. Of breaking into any Dwelling House, Tent, Boat, or other place of habitation ; or into any place used for the preservation

servation of property, between sunrise and sunset, with intent to steal therein; — or

ART. 129. Of stealing from any habitation, or from any person any property exceeding Three Hundred Company's Rupees in value ; — or

ART. 130. Of having purchased any property so stolen, exceeding in value Three Hundred Company's Rupees, knowing it to have been stolen ; — or

ART. 131. Of Arson ; — or

ART. 132. Of an unnatural crime ; — or

ART. 133 Of Rape ; — or

ART. 134. Of enticing and taking away, or of causing to be enticed or taken away for any unlawful purpose, any unmarried woman under the age of fifteen years ; — or

ART. 135. Of stealing a child under the age of 8 years :—

Shall be sentenced by such General Court Martial to suffer imprisonment with or without Hard Labor, for any period not exceeding seven years.

*District*

*Offences punishable by Imprisonment not exceeding 3 years.*

ART. 136. It shall be competent to the Commander in Chief, and to any Officer having authority to convene District or Garrison Courts Martial, to cause offenders not being Commissioned Officers accused of any of the offences specified in the preceeding Articles of War, for which the punishment of Death or Imprisonment or Transportation for Life is not provided therein, to be tried for such offence before a District or Garrison Court Martial, and such Court shall have power, on conviction, to sentence any such offender to imprisonment with or without Hard Labor for any period not exceeding three years.

ART. 137. Any Officer or Soldier who shall be convicted by a General, District or Garrison Court Martial of stealing from any habitation or from the person any property, of value not exceeding three Hundred Company's Rupees but exceeding Fifty Company's Rupees ; — or

ART. 138. Of having purchased or received any stolen property of value not exceeding Three Hundred Company's Rupees, knowing it to have been stolen but  
not

not under aggravating circumstances ; ———  
or

ART. 139. Of having stolen property in his possession, and of having kept possession of such property, after becoming aware of its having been stolen ;

Shall be sentenced by such Court to suffer Imprisonment with or without Hard Labour for any period not exceeding three years.

—————  
*Regimental, Detachment or Line Courts  
Martial.*

—————  
*Offences punishable by Imprisonment not  
exceeding six months.*

—————  
ART. 140. It shall be competent to any Officer having authority to convene a Court Martial, to cause offenders, not being Commissioned Officers, accused of any of the offences specified in the preceding Articles of War, for which no punishment exceeding Imprisonment with Hard Labor for three years is therein provided, to be tried before Regimental or Detachment or Line Courts Martial, and any such Court shall have power, on conviction, to sentence any such offender to suffer Imprisonment with or without Hard Labor for any period not exceeding six calendar months.

*Offences*

*Offences punishable by Imprisonment from six months to one year, according to the description of Court.*

ART. 141. Any Officer or Soldier who shall be convicted of stealing property to the value of Fifty Company's Rupees, or of less value;— or

ART. 142. Of Assault or Affray unattended with homicide, severe wounding, or aggravating circumstances ;—

Shall be sentenced to suffer Imprisonment with or without Hard Labor, for any period not exceeding one year by the award of a General or District or Garrison Court Martial ; or for any period not exceeding six calendar months by the award of a Regimental or Detachment or Line Court Martial.

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*Offences punishable by Imprisonment from six months to two years, according to the description of Court.*

ART. 143. Any Officer or Soldier, who shall be convicted of resisting the process of a Magistrate or Police Officer ; — or

ART. 144. Of having committed any offence against person or property for which provision is not already made in the preceding Articles of War ;—

Shall



SHALL be sentenced to suffer Imprisonment for any period not exceeding two years by the award of a General Court Martial ; not exceeding one year by the award of a District or Garrison Court Martial ; and not exceeding six calendar months by the award of a Regimental or Detachment or Line Court Martial.

ART. 145. Any Officer or Soldier who shall be convicted by a General or District or Regimental Court Martial of having been present, aiding and abetting, or of having caused, instigated or procured the commission of any of the offences specified in any of the preceding Articles shall be sentenced by such Court to punishment therein provided for such offence, and awardable by General or District or Regimental Courts Martial respectively.

ART. 146. No sentence of death shall be carried into effect until confirmed by the Commander in Chief, nor, if the trial shall have been held within the British Territories forming part of either of the Presidencies of Fort William, Fort St. George, and Bombay respectively, until such confirmation shall have been concurred in by the Government of the Presidency where such trial shall have been held.

ART. 147. The Commander in Chief is authorized at his discretion to confirm any sentence of death, or to remit such sentence or to commute it into imprisonment with  
hard

hard labour and transportation for life, or into imprisonment with hard labour for any term of years.

ART. 148. No sentence of transportation shall be carried into effect until confirmed by the Commander in Chief, and the Commander in Chief is authorized at his discretion to confirm any such sentence or to commute it into imprisonment with or without hard labour for any period of time.

ART. 149. It shall be competent to any Officer having authority to confirm the sentence of a General or other Court Martial to remit any sentence passed by such Court Martial, or to mitigate such sentence by substituting simple imprisonment for imprisonment with hard labour, or by reducing the period of imprisonment, or by directing the discharge of the offender in lieu of any imprisonment.

ART. 150. But no sentence of imprisonment with hard labor, passed by a Regimental, or Detachment or Line Court Martial, and confirmed either in whole or in part by the Commanding Officer ; and no award of discharge substituted for other punishment, as aforesaid, by such Commanding Officer, shall be carried into effect without the sanction and authority of the Officer Commanding the Division or Field Force, or District or Brigade, (being the senior Officer on the spot,) in which the offender may be serving, or of the senior Officer on the spot in the field.

ART. 151

ART. 151. A person who may have been tried for any offence by a Court Martial, under the authority of these Articles of War, shall not be tried for the same in any other Court whatsoever, and no person who shall have been acquitted or convicted of any offence by a Court or Civil Judicature shall be punished by a Court Martial for the same, otherwise than by Cashiering or Dismissal from the service.

ART. 152. The Regulations at present in force at any Presidency, by which the office and powers of Commissariat Officers, or Officers in charge of the Police or Superintendents of Bazzars are defined and controuled ; or by which Panchayets are constituted and guided, or by which jurisdiction is given to Courts Martial over offences committed by persons amenable to the Articles of War, within certain limits beyond or around Cantonments ; are hereby declared to be in full force, and the same shall continue to be observed at the several Presidencies respectively.

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## SECTION VII.

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### *Application of the Articles.*

ART. 153. All Officers and Soldiers, all Drivers,

Drivers, Farriers, Trumpeters and Drummers ; all Hospital Attendants, Sub-Assistant Surgeons, Native Doctors, and Dressers ; all Artificers and Labourers, Suttlers, Followers, public and private, or others attached to or serving with any part of the Army, are to be governed by these Articles and subject to trial by Courts Martial.

Provided, that persons of European descent, (whether on the side of their father or mother) professing the Christian religion, shall not be amenable to these Articles ; but if belonging to the descriptions mentioned in this Article, (and not being Her Majesty's natural born subjects born in Europe, or the children of such subjects,) shall be tried and punished in the same manner as persons are who are subject to the Mutiny Act and Articles of War in force for the better government of the Officers and Soldiers in the European Service of the East India Company.

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*Promulgation of the Articles.*

ART. 154. These Articles are to be translated into the several languages of the different Presidencies, and the parts following, viz. the second Section, together with the following Articles in other Sections which are marked with an \* (Asterisk) viz 2, 4, 72, 75, 77, 99, 100, 107, and 108, are to be read

I.O. 39  
W.B. 11.

64

*Promulgation of the Articles.*

read once every six months at the head of every Regiment, Troop or Company mustered in the service, and to every Recruit at the period of his enlistment.

*FINIS.*

# ARTICLES OF WAR FOR NATIVE ARMY.

ACT No. XIX. OF 1847.

[*Passed on the 18th December, 1847.*]

Recites expediency of making certain amendments in the Articles of War, for government of Native Army.

1. Repeals the said Articles of War contained in Act XX., 1845.
2. Enacts the following Articles of War.

## ARTICLES OF WAR.

### SECTION I.—Of Enlisting and Discharges.

Article 1.—Every recruit to have the first four Articles of Section 2 read, &c, to him; after which oath or declaration shall be required of him.

Article 2.—No Commissioned Officer to be dismissed, except by Sentence of G. C. Martial, nor any Non-commissioned Officer or Soldier, except by Sentence of C. M. or order of Commander-in-Chief of Presidency. Pension to be forfeited on discharge, &c. Provided, Sentence of discharge by C. M. inferior to G. C. M. not to be carried into effect without concurrence of Commander-in-Chief, &c. But the G. G. in C., in his executive capacity, and G. in C., &c., empowered to order dismissal or discharge.

Article 3.—Non-commissioned Officers and Soldiers discharged, to be furnished with Discharge Certificate, expressing, &c.

Article 4.—Non-commissioned Officer or Soldier enlisting into H. M.'s regiment without a regular discharge to be liable to be treated as a Deserter.

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### SECTION II.—Crimes punishable with Death, Transportation, &c.

Article 5.—Officer or Soldier beginning, &c., exciting, &c., mutiny, or being present and not endeavouring to suppress it, or coming to the knowledge of, &c., and not giving information to Commanding Officer.

Article 6.—Striking superior Officer, or drawing, &c., weapon, or using, &c., any violence, &c., on or off duty, &c.

Article 7.—Disobeying lawful command of superior Officer.

Article 8.—Deserting from E. I. Co.'s service.

Article 9.—Being sentry, in time of war, &c., sleeping, &c., or leaving his post shamefully, &c.

Article 10.—Abandoning, &c., any garrison, &c., or using means to induce abandonment of garrison, &c.

Article 11.—Treacherously making known the watch-word, &c.

Article 12.—Holding correspondence with, or giving intelligence to enemy, &c.

Article 13.—Directly or indirectly assisting, &c., the enemy, or harbouring enemy, &c.

Article 14.—Treacherously releasing, &c., any enemy, &c., placed as a prisoner under his charge.

Article 15.—Misbehaving himself before the enemy, &c.

Article 16.—In presence of enemy, &c., casting away his arms, &c.

Article 17.—Leaving his Commanding Officer, post, colors, or party, in time of action, to go in search of plunder.

Article 18.—In time of war doing violence to any person bringing provisions, &c., forcing a safeguard, breaking into house, &c., for plunder, or plundering fields, &c.

Article 19.—In time of war, intentionally occasioning false alarms, by discharging fire arms, &c.

Article 20.—Without proper authority releasing State prisoners, &c.

Article 21.—Being a sentry over state prisoner, &c., quitting his post, &c.

PUNISHMENTS FOR ABOVE OFFENCES.—If an officer, to suffer death or transportation for life, or be dismissed the service, and if a Soldier, death or transportation for life, or imprisonment, &c., or corporal punishment, or dismissal, &c., as by a G. C. M. shall be awarded.

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#### Crimes not punishable with death.

Article 22.—Officers or Soldiers spreading reports, &c., calculated to create unnecessary alarm, &c.

Article 23.—In or previous to action, using words tending to create alarm, &c.

Article 24.—Being drunk when on or for duty, or on parade, &c.

Article 25.—Any soldier being grossly insubordinate, &c., in the ranks or in presence of Court Martial, shall, if an officer, be dismissed, &c., or suspended, &c., and if a soldier, be punished as C. M. shall award, but not with death, transportation, or imprisonment with hard labour.

Article 26.—Officer behaving in a manner unbecoming an officer, &c.

Article 27.—Officer or Soldier under arrest, leaving his confinement, &c.

Article 28.—Advising or persuading other officer or soldier to desert, &c., conniving at desertion, &c., receiving deserter, &c.

Article 29.—Obtaining, &c., for officer, &c., any pensions, &c., by false statement, &c.

Article 30.—Knowingly making false return, &c., of the state of the men under his command, or of arms, &c.

Article 31.—Malingering, feigning or intentionally producing disease, &c.

Article 32.—At any post, or on march, &c., extorting money, &c., as fees, &c., or extracting from villagers, carriage, &c.



Article 33.—Wantonly and intentionally defiling places dedicated to religious worship, &c., or insulting religious prejudices, &c.

Article 34.—Without orders committing waste, &c., or destroying property.

Article 35.—Soldier off duty, contrary to orders, appearing in camp, &c., or on occasion of visiting towns, &c., carrying sword, &c.

Article 36.—Selling, pawning, &c., horse, &c.

PUNISHMENTS FOR ABOVE OFFENCES.—If an officer, dismissal from the service, or suspension from rank, &c. : if a soldier, such punishment as a General, District or Garrison C. M. is by these articles empowered to award.

Crimes punishable with Fine or loss of Pay, in addition to other Punishments.

Article 37.—Officer or soldier embezzling, &c., money, &c., or provisions, &c., or spoiling, &c., property, or conniving at above crimes, shall, on conviction before G. C. M., be dismissed the service, fined, &c., and liable to imprisonment, &c.

Article 38.—Soldier guilty of disgraceful conduct, in maiming himself, &c.; (39) in purloining, &c., Government stores; (40) in stealing money, &c., the property of a soldier, &c.; (41) in embezzling, &c., public money; (42) in committing paltry offence of a fraudulent nature, &c.; (43) or guilty of other disgraceful conduct being of a cruel, indecent, or unnatural kind.

PUNISHMENT.—Such as G., D., or Garrison C. M. may under these articles award for disgraceful conduct, and offender, if not dismissed, shall be put under stoppages, &c., and, if dismissed, shall forfeit arrears of pay, &c.

Crimes not punishable with Corporal punishment, or Imprisonment with Labor.

Article 44.—Officer, &c., striking, &c., any soldier.

Article 45.—Sentry in time of peace, sleeping on his post, or leaving it, &c.

Article 46.—Officer, &c., knowingly enlisting a deserter, &c.

Article 47.—Directly or indirectly requiring, &c., a bribe, &c., as a consideration for procuring leave of absence, &c.

Article 48.—Not seeing reparation done to parties injured in manner specified, or not reporting case to Superior Officer.

Article 49.—Refusing to receive prisoner duly committed, &c.

Article 50.—Quitting guard or picquet in time of peace, &c.

Article 51.—Impeding Provost Marshal, &c., or refusing to assist him, &c.

Article 52.—Being absent from his regiment, not rejoining same on proper information of its being ordered on service.

Article 53.—In time of peace, occasioning false alarms, &c., discharging fire arms, &c.

Article 54.—Omitting to repair to parade at fixed time, &c.

Article 55.—Quitting his Troop or Company without leave, &c.

Article 56.—Absenting himself without leave, or overstaying his time, &c.

Article 57.—Being found two miles from camp contrary to orders, &c.

Article 58.—Contrary to orders, being absent from cantonments after tatoo, &c., or from camp, &c.

Article 59.—Selling, losing, wasting, &c., ammunition, &c.

Article 60.—Crimes not capital, and disorders or neglects, to the prejudice of good order and military discipline, not specified in these articles, to be cognizable by C. M. and punished, according to nature and degree of offence, &c., but not with corporal punishment or imprisonment with hard labor.

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Crimes incident to Courts Martial.

Article 61.—Person amenable to Articles of war duly summoned before Court Martial, and not attending, refusing to be sworn, &c., shall be punished by same or another C. M. in manner specified.

Article 62.—Persons not amenable to Articles of war, committing above offences, to be delivered over to Magistrate, &c.

Article 63.—Person using menacing or disrespectful words, &c., in presence of a C. M. then sitting, &c., shall be punished according to condition of offender, &c.

Article 64.—Officer or soldier guilty of wilfully giving false evidence, &c., before G. or other C. M.; or of inducing other person to do so; to be dismissed, &c., the Service, &c.

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Crimes admitting of less serious notice.

Article 65.—Permits, on application to, and with consent of General or other Officer, &c., crimes requiring less serious notice, to be tried by District, Garrison or Reg. C. M., but not mutiny, &c.

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Offences on the line of March, or on board vessels.

Article 66.—For offences committed on line of March, or on board ship, &c., the Officer in command may try Soldier by Regimental or Detachment C. M. and confirm and execute sentence, &c., but sentence not to exceed that which Reg. C. M. is competent to award, &c.

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SECTION III.—Administration of Justice.

Article 67.—Officer or Soldier committing Crime deserving punishment by C. M. to be put under arrest, &c.

Article 68.—No person to be fined or punished for offence committed more than three years before, &c., except in case of specified impediments to earlier trial, and then trial to take place not more than two years after expiration of impediment.

Article 69.—Offender may be tried in any place where he may come after commission of offence.

Article 70.—Gives power to Commander-in-Chief at the different Presidencies to appoint G. or other Courts Martial: confirm, &c., Sentences, by warrant to authorise General Officers, &c., to appoint C. M. &c.

Article 71.—G. C. M. not to consist of less than thirteen commissioned officers, except when held out of the E. I. Co.'s Territories, and then of seven. Sentence not to be put in execution until reported to C.-in-C., &c., and confirmed, &c.

#### Powers of General Court Martial.

Article 72.—G. C. M. may sentence to death or transportation for crimes liable to those punishments. When punishment is not defined by these Articles, in case of Commissioned officer, G. C. M. may adjudge dismissal from Service, &c., and may sentence non-commissioned Officer to dismissal, &c., and soldier to suffer two hundred lashes, &c.

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#### Confirmation and commutation of sentence by G. in C.

Article 73.—Sentence of death may be commuted by C.-in-C. into transportation for life, &c., and transportation, in case of Commissioned Officers, into dismissal from service, &c., and dismissal, in like case, into suspension from rank and pay, &c., and transportation in case of soldier, into imprisonment, &c., and corporal punishment and dismissal, &c., or, in case of non-commissioned Officer, reduction to the ranks, &c., and in like case may commute sentence of dismissal to reduction to the ranks &c.; like powers as to sentence to imprisonment with hard labor, &c.

Article 74.—District or Garrison C. M. to consist of not less than seven Commissioned Officers, except in specified circumstances, when it may consist of five, &c. Sentence of, requires Confirmation, Commander-in-Chief may remit, mitigate or commute sentences of such C. M.

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#### Powers of District or Garrison Court Martial.

Article 75.—D. or G. C. M. may sentence non-commissioned officer to be reduced to theranks, &c., or dismissal, &c., or placed lower, &c., and soldier to be dismissed, to suffer corporal punishment, &c., or imprisonment, &c., and in addition, to forfeit additional pay or pension, &c.

Article 76.—Reg. C. M. to consist of five, or, in specified circumstances, three Commissioned Officers: and be assembled by order of Commanding Officer of Regiment. Sentence to require confirmation of Commanding Officer. Sentences of corporal punishment, &c., not to be carried into effect without sanction, &c., of Officer commanding the division, &c., except in detached situations, &c., where an immediate example is necessary.

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#### Powers of Regimental Court Martial.

Article 77.—Same as of District C. M., except as to amount of corporal punishment, and length of imprisonment and punishment, and extent of forfeitures, which it may award.

Article 78.—Officer commanding detachment of his own regiment may assemble Reg. detachment C. M., and Officer commanding detachment from different corps may assemble Detachment or Line C. M., &c. Sentence to require confirmation of Officer commanding the Regiment in certain cases.

Article 79.—Officer convening may instruct the C. M. when not to make corporal punishment or solitary confinement part of its sentence.

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Execution of Sentence of Court Martial.

Article 80.—In sentence of death, Court shall specify the mode of execution in prescribed form of words.

Article 81.—Sudder Courts to carry into execution sentences of transportation, &c., and judge, &c., sentences of imprisonment.

Article 82.—Commander-in-Chief may order transportation beyond sea, of soldier under sentence of transportation for life, &c.

Article 83.—Commander-in-Chief may order persons under sentence of imprisonment, to be imprisoned in any public prison, &c.

Article 84.—Soldier previous to undergoing imprisonment with hard labour, to be struck off the strength of his corps, &c.

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## Offenders sentenced to dismissal for Disgraceful Conduct.

Article 85.—Such offenders, when subjected to corporal punishments, or imprisonment with hard labour, to be dismissed with ignominy.

Article 86.—Fine or stoppages adjudged by C. M. may be satisfied out of arrears of pay, &c. No soldier to be continued under forfeiture longer than one year, nor at any one time to more than half his pay or allowances, &c.

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## Forms of Proceeding.

Article 87.—Trials to take place between the hours of 6 a.m. and 4 p.m. except, &c.

Article 88.—At General Court Martial a Judge Advocate or European Officer of not less than ten years' service, to conduct the proceedings; and European Officer of not less than four years' standing at C. M. inferior to General, except, &c.

Article 89.—C. M. to have an interpreter, &c.

Article 90.—Senior Officer to be President. Native Officers how to rank. Trial to go on in case of death, &c., of President, if the requisite number of Officers present, &c.

Article 91.—No finding or sentence to be revised more than once; on revision, no evidence to be received. Same members to be convened for revision of sentence, &c.

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## Manner of Voting.

Article 92.—C. M., in giving votes, to begin with the youngest member; except when death is awarded, decision to be according to the majority; in case of equality, decision to be in favor of prisoner, except in question of finding. President to have a casting vote.

Article 93.—Sentence of death not to be given, unless two-thirds of the members present concur, &c.

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## Affirmations.

Article 94.—Affirmation to be administered to Interpreter; also to each member; also to Judge Advocate or Superintending Officer.

Article 95.—Witnesses to be examined on oath or affirmation, according to the forms of their religions, &c. Wilful false evidence to be punished as perjury.

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Summoning Witnesses not amenable to these Articles.

Article 96.—Such witnesses to be summoned by magistrate on requisition of Judge Advocate, &c.

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Powers and Duties of Provost Marshal.

Article 97.—For repression of irregularities, &c., in the field and on line of march, Provost Marshal to be appointed. Their duties, their powers, how limited.

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Trials by European Court Martial.

Article 98.—Continues to native troops the privilege (where it already exists) of claiming to be tried by C. M. composed of European Officers. G. G. of I. in C. may give this privilege to native troops in any Presidency.

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SECTION IV.—Effects of the Dead.

Articles 99 and 100.—Officer or soldier, &c., dying, &c., Commanding Officer, &c., shall, if no heir or executor appears, secure his effects, &c. Effects to be publicly sold; and, after payment of debts, &c., residue to be accounted for to heir or other representative, &c., or remitted to General Treasury.

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SECTION V.—Miscellaneous.

Article 101.—Effects of deserter to be publicly sold, and, after payment of debts, &c., residue to be remitted to General Treasury.

Article 102.—Powers under these articles relating to Commander-in-Chief shall belong to Commander-in-Chief at any Presidency, &c., and power relating to soldiers to extend to Non-Commissioned Officers.

Article 103.—Troops of one Presidency, serving in another Presidency, to be deemed to be under orders of Commander-in-Chief, in latter Presidency, &c., unless Governor-General otherwise orders, &c.

Article 104.—Officer commanding E. I. Co.'s troops in places out of H. M.'s dominions, &c., shall, on complaint, &c., of offences, &c., summon a G. C. M. though not authorized by warrant. Such C. M. to consist of three Officers at least, and to have all powers of G. C. M. under these Articles. But sentence to be confirmed, &c.

Article 105.—Only G. C. M. shall have power to try Commissioned Officers, or to sentence to death or transportation.

Article 106.—No person acquitted or convicted before C. M. to be tried a second time for same offence, but previous conviction, &c., may be given in evidence, &c., for purpose of affixing punishment.

Article 107.—Non-Commissioned Officer not to be reduced to the ranks, but by sentence of a C. M., or by order of C.-in-C., &c.

Article 108.—Officer or soldier thinking himself wronged by his superior officer, is to complain to Commanding Officer of his Troop or Company, &c.

Article 109.—In case of light offences Commanding Officer may award extra drill, &c., restriction to barrack room, &c., confinement in quarter guard, &c.

Article 110.—Officer or soldier, taken prisoner, shall forfeit pay, &c., while a prisoner, but on returning to service, &c., shall be entitled to pay, if he can establish facts specified in Articles.

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#### SECTION VI.—Mode of Dealing with Offences not Military.

Articles 111 and 112.—Offenders under this head to be delivered over to civil functionaries, unless in places where H. M. may have no civil functionaries, &c.

Articles 113, 114, and 115.—G. C. M. shall have cognizance of offences punishable with death, transportation and imprisonment for life, or a term of seven years. District or Garrison C. M. cognizance of offences, punishable with imprisonment for three years, &c., and Regimental Detachment and Line C. M. of offences punishable with six months' imprisonment, &c.

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#### Punishment of Death.

Article 116.—Murder to be punished with death, by hanging, &c. Killing one person, with intent to have killed another, to be deemed murder. Also wilful injury, though not intended for any person in particular, but killing any person to be deemed murder.

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#### Punishment of Transportation.

Article 117.—Breaking, &c., by day or night into any dwelling-house, &c., with intent to rob or steal; robbery or attempt to rob, stealing, &c.; in house or from the person, accompanied respectively with attempt to commit murder &c., shall be punished with transportation for life, &c.

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#### Imprisonment for Fourteen Years.

Articles 118, 119, 120, 121, 122, and 123.—Last-mentioned offences, accompanied with wounding, &c., not endangering life; wounding with intent to murder, &c., another person; robbery by open violence, or dacoity, &c.; breaking into dwelling-house, &c., between sunset and sunrise, with intent to rob, &c., or actually stealing from such dwelling-house, &c., not exceeding one hundred Rupees, purchasing, &c., stolen property, punishable with imprisonment, &c., not exceeding fourteen years.

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#### Imprisonment not exceeding Seven Years.

Articles 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, and 135.—Culpable homicide and not amounting to wilful murder; premeditated affray, attended with homicide, &c., intentionally wounding, &c., accidentally wounding, &c., with intention of injuring some other person; breaking into dwelling-house,



tent, &c., between sunrise and sunset, with intent to steal, &c.; stealing, &c., any property exceeding three hundred Rupees in value, &c., purchasing stolen property, &c., exceeding same value, &c. Arson; unnatural crime; rape; enticing and taking away, &c., unmarried woman under the age of sixteen years; stealing child under eight years, punishable with imprisonment, &c., not exceeding seven years.

#### Imprisonment not exceeding Three Years.

Article 136.—Commander-in-Chief, &c., may authorize District or Garrison C. M. to try soldiers for above offences, but with power to sentence only to imprisonment, &c., not exceeding three years.

Articles 137, 138, and 139.—Officer or soldier convicted by G.D. or Garrison C. M. of stealing, &c., property exceeding fifty and not exceeding three hundred Rupees in value; of having purchased, &c., stolen property not exceeding three hundred Rupees in value; or of having stolen property in his possession, &c., punishable with imprisonment, &c., not exceeding three years.

Article 140.—Regimental, Detachment, or Line C. M. may sentence to imprisonment not exceeding six months, for offences for which no punishment exceeding imprisonment for three years with hard labour is provided.

Articles 141, 142.—Stealing property to value of fifty Rupees or less; committing assault, &c., punishable with imprisonment, &c., not exceeding one year, by sentence of G.D. or G. C. M., and not exceeding six calendar months, by sentence of Regimental, D., or L. C. M.

Articles 143 and 144.—Resisting process of Magistrate, &c., and any offence not provided for in Articles of War, punishable with imprisonment for not less than two years, one year, and six months, by sentence of General C. M., District, or Garrison, and R. D. or Line C. M. respectively.

Article 145.—Aiding and abetting, &c., offences punishable in same manner as the principal offences.

Article 146.—No sentence of death to be carried into effect until confirmed by the Commander-in-Chief, nor until such confirmation has been concurred in by Presidency Government, if trial has been had within limits of Presidency.

Article 147.—Commander-in-Chief may confirm sentence of death, or commute it, &c.

Article 148.—Sentence of transportation not to be carried into effect until confirmed. Commander-in-Chief may commute it, &c.

Article 149.—Any Officer having authority to confirm, may remit or mitigate sentence, &c.

Article 150.—No sentence of imprisonment with hard labour passed by R. D. or L. C. M., and no award of discharge, &c., shall be carried into effect without sanction of Officer Commanding Division, &c.

Article 151.—No person tried by C. M. under Articles of War, shall be tried for same offence in any other Court, and after trial in Civil Court, C. M. not to punish otherwise than by cashiering or dismissal, &c.

Article 152.—Continues regulations relating to the powers of Commissariat Officers, &c.



## SECTION VII.—Application of the Articles.

Article 153.—To what persons and classes these articles to apply, viz., all officers, soldiers, all drivers, farriers, &c., provided that persons of European descent, &c., professing the Christian religion, shall not be amenable to these Articles, &c., but shall be tried as persons who are subject to the Mutiny Act, &c.

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## Promulgation of Articles.

Articles 154.—The above Articles to be translated into the languages of the different Presidencies, specified parts to be read every six months, at the head of every regiment, &c.

An Act to make certain Amendments in the Articles of War for the government of the Native Officers and Soldiers in the Military Service of the East India Company.

Repealed by Act XXIX., 1861, which re-enacts Articles of War for the Native Army.

## MILITARY LAW.—NATIVE ARMY.

ACT No. VI. OF 1850.

*[Passed on the 15th March, 1850.]*

1, 2, 3. Commander-in-Chief in each Presidency may pardon or remit punishment of purely Military offences of Native Officers and Soldiers; (2) by warrant. (3) Countersigned by Magistrate, &c., (4) to which all Sheriffs, Gaolers, &c., shall give effect.

For enabling the Commander-in-Chief to pardon Military Offences.

Repealed by Act XXIX., 1861.

# ARTICLES OF WAR—NATIVE ARMY.

ACT No. XXXVI. OF 1850.

*[Passed on the 4th October, 1850.]*

1. Repeals part of 113th Art. of War.
2. No Native Officer, &c., entitled to pay or allowance while under sentence, but shall be clothed and fed according to rates, &c.

An Act to amend the 113th Article of War for the Native Army.

Repealed by Act XXIX., 1861.

• NATIVE ARMY.

ACT No. III. OF 1854.

*[Passed on the 3rd February, 1854.]*

Amends the 38th Article of War, by prohibiting the pawning of any medal or decoration for service, &c.

An Act to amend the 38th Article of War for the Native Army.

Repealed by Act XXIX., 1861.

## ARTICLES OF WAR.—NATIVE ARMY.

ACT No. X. OF 1856.

*[Received the assent of the G. G. on the 11th April, 1856.]*

Substitutes new article for 122nd.

An Act to repeal the 122nd Article of War for the Native Army, and to substitute a new Article in lieu thereof.

Repealed by Act XXIX. 1861.

# ACT No. VIII of 1857.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor General on the 16th May 1857.)

## AN ACT to amend Act XIX of 1847.

WHEREAS it is expedient to facilitate the trial and punishment of offences against the Articles of War for the Native Army: It is enacted as follows:—

Preamble.

I. It shall be lawful for the Governor General of India in Council from time to time, by Order in Council, to empower every General or other Officer having the Command of Troops in the Service of Her Majesty or of the East India Company, or any of such General or other Officers, to appoint General or District or Garrison Courts Martial, as occasion may require, for the trial of any of the Officers, Soldiers, or Followers in the Service of the East India Company, being Natives of the East Indies or of other places within the limits of the said Company's Charter, and amenable to the Articles of War for the Native Troops, who may be charged with any offence punishable by the said Articles of War, which, in the judgment of such General or other Officer, requires to be punished without delay; and also to confirm and carry into effect, immediately or otherwise, any sentence of such Court Martial; or to commute, mitigate, or remit any such sentence; or, in case he shall deem it necessary so to do, to refer any such sentence to the Commander-in-Chief for his orders thereon.

Governor General in Council may empower General or other Officers having the Command of Troops to appoint General or District or Garrison Courts Martial for the trial of persons amenable to the Articles of War for the Native Troops.

II. Any General Court Martial, which may be appointed under the authority of this Act, shall be appointed by the Senior Officer on the spot, and shall consist of not less than five Commissioned Officers, the number to be fixed by the General or other Officer appointing the Court Martial. The Order in Council may direct that a General

General Courts Martial to be appointed by the Senior Officer on the spot, and to consist of not less than five Members.

PRICE 6 PIES.

ACT No. VIII OF 1857.

General Court Martial to be appointed under the provisions of this Act, shall consist wholly of European Commissioned Officers or of Native Commissioned Officers ; and in such case, the Officer appointing the Court Martial shall determine whether the same shall consist of European Officers or of Native Officers. Every General Court

The Order in Council may direct that General Courts Martial shall consist wholly of European or of Native Commissioned Officers.

Martial appointed under the authority of this Act shall have all the powers of a General Court Martial specified in the 75th Article of War for the Native Army; and sentence of death, or other punishment to which the offender is liable

Powers of General Courts Martial appointed under this Act.

by the said Articles of War, may be given by such Court Martial, if a majority of the Members present concur in the sentence.

III. General Order No. 677 of 1857, made by the Governor General in Council in the Military Department, and bearing date the 14th of May 1857, is hereby confirmed; and the same shall have the force and effect of Law, and shall be deemed to have had such force and effect from the date thereof.

General Order of Governor General in Council, Military Department, No. 677 of 1857 confirmed.

The said General Order or any Order issued under this Act may be countermanded or altered.

IV. It shall be lawful for the Governor General in Council to countermand or alter the said General Order, or any Order in Council which may be issued under the authority of this Act.





# NATIVE ARMY.—ARTICLES OF WAR.

ACT No. XXXII. OF 1857.

*[Received the assent of the G. G. on the 28th Nov., 1857.]*

Recites expediency of empowering Government to order mutineer or deserter to be marked.

1. Empowers Government to order, specially or generally, that a mutineer shall be marked with the letter M, and a deserter with the letter D, on the left side two inches below the armpit.

2. Empowers the convicting authority to make a similar order. .

3. Interprets the word "Government."

4. Upholds past sentences of branding.

An Act to amend the Articles of War for the Native Army.

Repealed by Act XXIX., 1861.

ACT No. VI of 1860.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor General on the 23rd February 1860.)

*An Act to amend Act XIX of 1847 (Articles of War for the Native Army.)*

WHEREAS it is expedient to amend the 78th and 112th Articles of War for the Government of the Native Officers and Soldiers in the Military Service; It is enacted as follows:—

Preamble.

Powers of Commanding Officers of Native Regiments in punishing certain offences committed by Non-Commissioned Officers and Soldiers and Native Camp-followers.

I. There shall be added to the 78th Article of War for the Native Army the words following (that is to say)—

1. The Commander-in-Chief of the Presidency to which any Regiment belongs may confer the powers specified in this Article on the Commanding Officer for the time being of such Regiment. The Commanding Officer for the time being of such Regiment may summarily try all offences against the Articles of War for the Native Army committed by any person subject to those Articles (not being a Commissioned Officer), and sentence such offender on conviction, and carry out such sentence without confirmation or any further authority, notwithstanding any provision to the contrary contained in the said Articles of War; provided that such sentence shall not exceed the powers of a District or Garrison Court-Martial.

2. A Commanding Officer holding a trial under this Act shall be deemed a Court-Martial, and the word "Court-Martial" in 64, 66, 67, and 98 of the said Articles of War, so far as such Articles are applicable to persons amenable thereto, shall be deemed to include a Commanding Officer holding such trial.

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3. The

ACT No. VI of 1860.

3. The proceedings on such summary trials by a Commanding Officer shall be conducted in the presence of two or more European or Native Commissioned Officers, and shall be recorded in the English language, and the evidence shall be taken on oath or affirmation and interpreted by a competent Interpreter upon solemn affirmation; and when the Commanding Officer shall have recorded the finding and sentence, the proceedings shall be signed by such Commanding Officer and by the Officers in whose presence the trial was held, and shall, without delay, be forwarded to the General Officer Commanding the Division, who is hereby authorized to set aside the trial for reasons based on the merits of the case, but not of a merely technical nature, provided that every sentence so awarded by the Commanding Officer may be carried out without waiting for its approval by the reviewing Officer.

Forfeiture of pay and allowances during confinement under the 112th Article of War.

II. There shall be added to the 112th Article of War for the Native Army the words following (that is to say)—

Provided also that Soldiers subjected to confinement in the Quarter Guard, or Defaulters Room, or to solitary confinement as aforesaid, under this Article, shall forfeit all claim to pay and allowances during such confinement, and shall receive subsistence only, according to the rates of pay laid down in the Regulations.

## ACT No. XXIX OF 1861.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

*(Received the assent of the Governor-General on the 7th September 1861.)*

*An Act to consolidate and amend the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army.*

Preamble. WHEREAS it is expedient to consolidate and amend the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army; It is hereby enacted as follows:—

I. Act XXIII of 1839 (for authorizing sentences of imprisonment with or without hard labor by Courts Martial in certain cases), Act II of 1840 (for regulating the execution of sentences passed by Courts Martial in certain cases), Act XXVIII of 1841 (for extending Act XXIII of 1839 to Camp Followers), Act XIX of 1847 (to make certain amendments in the Articles of War for the government of the Native Officers and Soldiers in the Military Service of the East India Company), Act VI of 1850 (for enabling the Commander-in-Chief to pardon Military Offences), Act XXXVI of 1850 (to amend Article CXIII of the Native Army), Act III of 1854 (to amend the 38th Article of War for the Native Army), Act X of 1856 (to repeal the 122nd Article of War for the Native Army and to substitute a new Article in lieu thereof), Act VIII of 1857 (to amend Act XIX of 1847), Act XXXII of 1857 (to amend the Articles of War for the Native Army), and Act VI of 1860 (to amend Act

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ACT No. XXIX OF 1861.

XIX of 1847), shall be repealed from the day on which this Act shall come into operation, except in so far as they repeal any other Act or Acts.

II. The following Articles of War shall, from the day appointed for them to come into operation, be the Articles of War for the government of the Native Officers and Soldiers in the Military Service of Her Majesty, and for the Administration of Justice by Courts Martial to be holden on such Officers and Soldiers. Provided that all crimes and offences committed against the Articles of War contained in any Act repealed by this Act may be enquired into and punished in like manner as if they had been committed against the Articles of War contained in this Act ; and that every Warrant for holding any Court Martial under the Articles of War provided by any Act repealed by this Act shall remain in full force notwithstanding the repeal of such Act, and that no proceedings of a Court Martial upon any trial begun under any Articles so repealed shall be discontinued owing to the repeal of the same, but that every such trial shall proceed and be completed in the same manner as if this Act had not been passed.

Enactment of the following Articles.

Proviso.

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ARTICLES OF WAR.

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CHAPTER I.

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*Of Enlisting and Discharges.*

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ARTICLE 1.

Every Recruit, prior to being enrolled in any Regiment or Corps, shall have the 5th, 6th, 7th, and 8th, and 48th of these Articles of War read and explained to him. When reported fit for duty in the ranks, any usual declaration or charge shall be made to him by the Officer Commanding, in front of the Regiment or Corps, in presence of the Officers and Soldiers ; and the Recruit shall then, in front of the guns or colors, or, if attached to the Corps of Sappers and Miners, in front

Enlisting.



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front of such portion of the Corps as shall be present, make the subjoined affirmation :

“ I, \_\_\_\_\_, solemnly affirm in the presence of Almighty God, that I will be faithful to Her Majesty the Queen, and will go wherever I am ordered by land or sea, and will obey all commands of the Officers set over me, and will defend these guns (or colors) with my life.”

In the case of a Sapper and Miner, the words “and defend these guns (or colors) with my life,” shall be omitted.

ARTICLE 2.

No Commissioned Officer shall be dismissed, except by the sentence of a General Court Martial ; but the Governor-General of India in Council, or the Governor in Council, or the Commander-in-Chief of the Presidency to which a Commissioned Officer belongs, shall have power to order his discharge. Every such dismissal or discharge of a Commissioned Officer shall involve forfeiture of all claim to pension.

ARTICLE 3.

A Non-Commissioned Officer or Soldier shall be liable to dismissal or discharge by order of the Governor-General of India in Council, or of the Governor in Council, or the Commander-in-Chief of the Presidency to which he belongs,

The Commanding Officer of a Regiment or Corps shall have power to dismiss or discharge any Soldier below the rank of a Non-Commissioned Officer; and to dismiss, discharge, or reduce to the ranks any Non-Commissioned Officer belonging to such Regiment or Corps.

Every such dismissal or discharge shall involve forfeiture of claim to pension.

No Non-Commissioned Officer shall be reduced to the ranks for any stated period ; nor suspended from his rank; nor reduced from a higher to a lower grade of Non-Commissioned Officer.

Every

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Every Non-Commissioned Officer or Soldier discharged the service shall  
Certificate of dis- be furnished by the Commanding Officer of the Regi-  
charge. ment or Corps to which he belonged with a discharge  
Certificate in the Vernacular language of such Non-Commissioned Officer or  
Soldier. Such Certificate shall express the authority for, and cause of, the  
discharge, and the period of the entire service in the Army of such Non-  
Commissioned Officer or Soldier, and shall be accompanied with an English  
translation.

ARTICLE 4.

No Non-Commissioned Officer or Soldier, until he shall have received his  
discharge from the Regiment or Corps to which he  
Re-enlisting. belongs, shall enlist in any other Regiment or Corps;  
and any Non-Commissioned Officer or Soldier who shall so enlist, shall be  
considered a deserter, and shall suffer punishment accordingly.

Any Non-Commissioned Officer or Soldier who shall have been dis-  
missed or discharged from any Regiment or Corps, and shall enlist in any  
other Regiment or Corps, without at the time of such enlistment stating  
the fact of his dismissal or discharge, or showing his discharge certificate,  
may be dismissed the service by the Officer Commanding the Regiment or  
Corps in which he has enlisted.

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CHAPTER II.

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*Crimes and Punishments.*

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*Crimes punishable by General Court Martial.*

ARTICLE 5.

Any Officer or Soldier—

Who shall begin, excite, cause, or join in any mutiny or sedition in the  
Regiment or Corps to which he belongs, or in any other  
Mutiny and sedition. Regiment or Corps, on any pretence whatever; or who,  
being

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being present at any mutiny or sedition, shall not use his utmost endeavours to suppress the same; or who, coming to the knowledge of any mutiny, intended mutiny, or combination against the State, shall not give immediate information thereof to his Commanding Officer ;——or

ARTICLE 6.

Who shall strike his Superior Officer, or shall draw or offer to draw, or lift up any weapon, or use or offer any violence against him, whether on or off duty, and under any circumstances in which his Superior Officer may be distinguishable as such in any manner ;——or

ARTICLE 7.

Who shall disobey any lawful command of his Superior Officer ;——or

ARTICLE 8.

Who shall desert from Her Majesty's Service, whether he shall have re-enlisted or not ;——or

ARTICLE 9.

Who, being a sentry, in time of war or alarm, shall sleep upon his post; or shall quit his post without being regularly relieved, or without leave; or shall plunder or injure the property placed under his charge ;——or

ARTICLE 10.

Who shall shamefully abandon or deliver up any Garrison, Fortress, Post, or Guard, committed to his charge, or which it was his duty to defend; or who shall use means to induce any other Officer or Soldier so to abandon or deliver up any such Garrison, Fortress, Post, or Guard ;——or

Who



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ARTICLE 11.

Who shall treacherously make known the watchword to any person  
Making known watchword. not entitled to receive it according to the rules and discipline of war ;——or

ARTICLE 12.

Who shall, directly or indirectly, hold correspondence with or communicate  
Communicating with the enemy. intelligence to the enemy, or to any person in arms against the State, or who, coming to the knowledge of such correspondence or communication, shall omit to discover it immediately to his Commanding Officer ;——or

ARTICLE 13.

Who shall, directly or indirectly, assist or relieve the enemy, or any  
Assisting or protecting enemies. person in arms against the State, with money, victuals, or ammunition, or in any other way ; or shall knowingly harbour or protect any enemy or person in arms against the State ;——or

ARTICLE 14.

Who shall treacherously release, wilfully aid, or connive at the escape of  
Releasing or conniving at the escape of an enemy. any enemy or person in arms against the State, placed as a prisoner under his charge ;——or

ARTICLE 15.

Who shall, in the presence of an enemy or any person in arms against  
Misbehaviour before the enemy. whom it is his duty to act, misbehave or use means to induce any other person so to misbehave ;——or

ARTICLE 16.

Who shall, in presence of an enemy, or of any person in arms against  
Casting away arms, &c., in presence of an enemy. whom it is his duty to act, shamefully cast away his arms or ammunition ;——or

ARTICLE 17.

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ARTICLE 17.

Who shall, in time of action, leave his Commanding Officer, or his Post, or Colors, or Party, to go in search of plunder;—or

ARTICLE 18.

Who shall, in time of war, do violence to any person bringing provisions or other necessities to the Camp or Quarters of the Force with which he is serving; or shall force a safeguard; or shall break into any house or other place for or shall plunder any field or garden or other property;—or

ARTICLE 19.

Who shall, in time of war, by discharging any fire-arms, drawing a sword, beating a drum, making any signal, using any word, or by any means whatever, intentionally occasion alarm in action, camp, garrison, or quarters;—or

ARTICLE 20.

Who shall, without proper authority, release any State prisoner, or shall, through carelessness, or neglect, suffer any such prisoner to escape; or shall connive at the plunder or injury of any property in time of war, or the plunder or injury of any magazine or dock-yard, by the sentry or guard in charge such property, treasure, magazine, or dock-yard is placed;— or

ARTICLE 21.

Who, being a sentry placed over any State prisoner, or over any treasure, or over any magazine or dock-yard, shall quit his post without being regularly relieved, or without leave, or



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or shall sleep upon his post; or shall plunder or injure any property placed under his charge ;—

Shall, on conviction —

Punishment, if an Officer. If an Officer, suffer death ; or transportation for life, or for a period not less than seven years ; or such other punishment as a General Court Martial is by these Articles empowered to award :—

Punishment, if a Soldier. If a Soldier, suffer death ; or transportation for life, or for a period not less than seven years ; or imprisonment, with or without hard labor, for a period which may extend to fourteen years, and may be with or without solitary confinement ; or such other punishment as a General Court Martial is by these Articles empowered to award.

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*Embezzlement, punishable by General Court Martial.*

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ARTICLE 22.

Any Officer or Soldier—

Embezzlement. Who shall embezzle or fraudulently misapply any money entrusted to him on the Public account, or for any Military purpose ; or any provisions, forage, arms, clothing, ammunition, or Military stores, of whatever kind or description, the property of Government, entrusted to his charge ; or shall be concerned in or connive at any such embezzlement or fraudulent misapplication ;—or

Willful injury to certain Government property. Who shall wilfully injure any property of Government entrusted to him on the Public account, or for any Military purpose, or shall suffer such property to be injured ;—

Shall

ACT No. XXIX of 1861.

Shall, on conviction before a General Court Martial, be dismissed the  
service, and fined to the extent of his arrears of pay and  
allowances; and be further liable to suffer imprisonment  
with or without hard labor for a term which may extend to three years,  
and may be with or without solitary confinement.

*Crimes punishable by General or other Courts Martial, with any sentence which,  
by these Articles of War, any General or other Court Martial respectively  
is empowered to award.*

ARTICLE 23.

Any Officer—

Who shall behave in a manner unbecoming the character of an Officer  
(the fact or facts whereon the charge is grounded being  
clearly specified therein);—or

ARTICLE 24.

Any Officer or Soldier—

Who shall, in any operation in the field, spread any report, by any word  
or letter calculated to create unnecessary alarm in the  
troops, or in the vicinity, or in rear of the army ;— or

ARTICLE 25.

Who shall, in action or previously to going into  
action, use any word tending to create alarm or despon-  
dency ;—or

ARTICLE 26.

Who shall be drunk when on or for Duty, or on  
Parade, or on the Line of march ;—or

ARTICLE 27.

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ARTICLE 27.

Who shall strike or force any sentry ;——or  
Striking a Sentry.

ARTICLE 28.

Who shall advise or persuade any other Officer or Soldier to desert, or  
Advising or persuad- who shall connive at such desertion; or who shall  
ing desertion, &c. knowingly receive and entertain any deserter, or who  
knowing of any other Officer or Soldier having deserted, or knowing of any  
deserter having been received or entertained by any other Officer or Soldier,  
shall not immediately give notice to his own Superior Officer, or do his best to  
cause such deserter to be apprehended by the Civil power;——or

ARTICLE 29.

Who shall obtain, or attempt to obtain for himself, or for any other  
Obtaining pension by Officer or Soldier, or for any other person whatsoever,  
false statement. any pension or allowance, by any false statement, cer-  
tificate, or document, or by the omission of any true statement, certificate,  
or document ;——or

ARTICLE 30.

Who shall knowingly make a false return or report to any Officer autho-  
Making false return to rized to call for a return or report of the state of the  
Superior Officer. men under his command, or of any arms, ammunition,  
clothing, or other stores belonging to such men, or of which he has charge ;  
——or

ARTICLE 31.

Who, at any post, or on the march, shall unlawfully extort any money  
Extortion. or property of any description as a fee or duty, or on any  
pretence whatever; or shall, without authority, exact from  
any villager, or any other person, any carriage, portorage, or provisions ;——or

ARTICLE 32.



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ARTICLE 32.

Who shall wantonly and intentionally defile any place dedicated to religious worship, or shall wantonly and intentionally insult the religious prejudices of any person ;—or

Defiling place of religious worship.

ARTICLE 33.

Who, being under arrest or in confinement, shall leave his arrest or confinement before he is set at liberty by proper authority;— or

Breaking arrest or confinement.

ARTICLE 34.

Who shall, without orders, commit any waste, or spoil, or plunder, or shall injure or destroy any property; —or

Committing waste, &c.

ARTICLE 35.

Who shall knowingly enlist a deserter, or connive at his enlistment ;—or

Enlisting a deserter.

ARTICLE 36.

Who, directly or indirectly, shall require or accept a bribe, present, or gratification, on the pretence of, or as a consideration for, procuring leave of absence, promotion, or any other advantage or indulgence for any Officer or Soldier ;—or

Demanding or accepting bribes.

ARTICLE 37.

Who, being in command of any post, or on the march, shall not, on complaint made to him of any one under his command beating or otherwise ill-treating any person, or extorting from such person more than he is obliged to furnish, or disturbing any fair or market, or committing any kind of riot, see reparation done to the person injured; or, if that be impracticable, report the same to his Superior Officer ;—or

Those in command of post, &c., not seeing reparation done to injured parties, &c.

ARTICLE 38.

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ARTICLE 38.

Who, being in command of a guard, shall refuse to receive any prisoner duly committed to his charge ; or shall, without proper authority, release any prisoner; or shall suffer, through carelessness or neglect, any prisoner to escape ; -- or

Those in command of guard refusing to receive prisoners, &c.

ARTICLE 39.

Who, in time of peace, shall quit his guard or picquet without being regularly relieved or without leave ;—or

Quitting guard or picquet in time of peace.

ARTICLE 40.

Who shall impede a Provost Marshal or an Assistant of a Provost Marshal, or any person lawfully exercising authority ; or refuse when called upon to assist him when requiring his aid in the execution of his duty ;— or

Impeding Provost Marshal, &c.

ARTICLE 41.

Who, being on leave of absence, and having received information from the Commanding Officer of his Regiment or Corps, or from other proper authority, that his Regiment or Corps has been ordered on service, shall not rejoin without delay;— or

Those on leave of absence neglecting to rejoin their Regiment when ordered on service.

ARTICLE 42.

Who shall, in time of peace, by discharging any fire-arms, drawing a sword, beating a drum, or by any other means whatever, intentionally occasion a false alarm in camp, garrison, or cantonment ;—Or

False alarm in camp in time of peace.

ARTICLE 43.

Who shall, without sufficient cause, fail to repair, at the time fixed, to the parade, or place appointed for exercise or duty ;—or

Failure to attend parade, &c.

ARTICLE 44.



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ARTICLE 44.

Quitting company or  
parade without leave.

Who shall, without urgent necessity, or without leave of his Superior Officer, quit his company, or troop, or the parade ;——or

ARTICLE 45.

Absence without leave,  
&c. Who shall absent himself without leave; or shall, without sufficient cause, overstay the period for which leave may have been granted him ;——or

ARTICLE 46.

Any Officer or Non-Commissioned Officer——

Striking or ill-treating  
a Soldier.

Who shall strike or otherwise ill-treat any Soldier;  
——or

ARTICLE 47.

Any Soldier——

Insubordination.

Who shall be grossly insubordinate or insolent to his Superior Officer in the execution of his office ;——or

ARTICLE 48.

Refusal to assist in mak-  
ing field or other works. Who shall refuse to assist in the making of any field work, or other Military work of any description ordered to be made, either in quarters or in the field ;——or

ARTICLE 49.

Going armed contrary  
to orders. Who, when off duty, shall, contrary to orders, appear in or about camp or cantonments, or on occasion of going to or returning from, or in or about any town or bazar, carrying a sword bludgeon, or other weapon ;——or

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Article 50.

ACT No. XXIX OF 1861.

ARTICLE 50.

Who shall sell, pawn, or designedly or through neglect lose or injure his horse, arms, clothes, accoutrements, or Regimental  
Pawning, losing, or  
injuring horse, arms,  
accoutrements, &c. necessities; or any such articles entrusted or belonging to any other Soldier; or who shall make away with or pawn any medal or decoration granted to him by order of Her Majesty or of the East India Company, or by order of the Government, for service in the field or for general good conduct;—or

ARTICLE 51.

Who, being a Sentry, in time of peace, shall sleep upon his post; or shall leave it before being regularly relieved or without leave;—or  
Sentry in time of  
peace sleeping upon post,  
&c.

ARTICLE 52.

Who, contrary to orders, shall be found 2 miles from the camp;—or  
Soldier found 2 miles  
from camp contrary to  
orders.

ARTICLE 53.

Who, contrary to orders, shall be absent from his cantonment after tattoo, or from camp after retreat beating;—or  
Absence from canton-  
ment, &c.

ARTICLE 54.

Who shall sell, lose, or designedly, or through neglect, waste any ammunition delivered out to him;—  
Selling, losing, or wast-  
ing ammunition.

Shall, on conviction before a General or other Court Martial, be sentenced to suffer such punishment as such Court Martial is by these Articles empowered to award.  
Punishment.

*Disgraceful*

ACT No. XXIX OF 1861.

*Disgraceful Conduct; punishable by General or District Court Martial, with Corporal punishment, or Imprisonment with or without hard labor and solitary confinement, and in addition with Forfeiture of additional Pay and of Pension on Discharge, and Stoppages, of Non-commissioned Officers and Soldiers.*

ARTICLE 55.

Disgraceful conduct. Any Soldier who shall be guilty of disgraceful conduct :—

In wilfully maiming or injuring himself, or any other Soldier at the instance of such Soldier, with intent to render himself or such other Soldier unfit for the service, or with intent to take his own life ;—or

Wilfully maiming or injuring himself or other Soldier.

ARTICLE 56.

In malingering, feigning, or intentionally producing any disease or infirmity; or intentionally delaying his cure; or intentionally aggravating his disease or infirmity ;—or

Malingering, &c.

ARTICLE 57.

In purloining or selling any Government stores ;  
—or

Stealing or selling Government stores.

ARTICLE 58.

In stealing any money or goods, the property of any Officer or Soldier, or of any Military Mess, or of any person belonging to or serving with or attached to the Army ;—or

Stealing property of soldiers and others.

ARTICLE 59.

In plundering or injuring any property placed under his charge as sentry, or in charge of his guard, or in conniving at the plunder or injury of any such property ;  
—or

Plundering property under his charge as sentry, &c.

ARTICLE 60.



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ARTICLE 60.

Embezzling public money. In embezzling or fraudulently misapplying any public money entrusted to him for any Military purpose ;—or

ARTICLE 61.

Fraud or dishonesty. In committing any petty offence of a fraudulent or dishonest nature, to the injury of or with intent to injure the Government, or any person, Civil or Military ;—or

ARTICLE 62.

Cruelty, indecency, &c. Who shall be guilty of any other disgraceful conduct, of a cruel, indecent, or unnatural kind ;—

Shall, on conviction before a General or District or Garrison Court Martial, be liable to such punishment as such Court Martial is by these Articles of War empowered to award for disgraceful conduct.

Punishments.

Every offender so convicted, if not dismissed the service, shall, by sentence of the Court, be put under stoppages not exceeding half of his monthly pay and allowances, until the amount of any loss or damage arising out of his misconduct be made good.

If such offender be dismissed the service, he shall further be sentenced to forfeit any arrears of pay and allowances due at the time of his dismissal, towards making good any loss or damage arising out of his misconduct ; or to forfeit any portion of such arrears that may be required to make good such loss or damage.

A copy of every sentence of dismissal for disgraceful conduct passed by any Court Martial shall, after its confirmation, be transmitted by the Adjutant General of the Army to the Chief Civil Officer of the district wherein the village or other place to which the offender belongs is situated ; and such Chief Civil Officer

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Officer shall thereupon publish such sentence by affixing a copy thereof in the village or place, or otherwise as may be usual in the locality.

*Crimes incident to Courts Martial, punishable by General or other Court Martial according to the nature and degree of the offence.*

ARTICLE 63.

Any person amenable to these Articles of War, who shall, when duly summoned to attend as a witness before a Court Martial, neglect to attend, or shall refuse to be sworn, or to make affirmation, or to answer any question, or who shall instigate any other person so to offend ;

Refusal of a person amenable to Articles of War to attend Court Martial or to be sworn, &c.

Shall, on conviction, be sentenced by the same, or another Court Martial, to such punishment as any such Court Martial is by these Articles empowered to award.

ARTICLE 64.

Any person not amenable to these Articles of War, who shall, when duly summoned to attend as a witness before a Court Martial, refuse or neglect to attend; or shall refuse to be sworn, or to make affirmation, or to answer any question ; or who shall, when he has been duly sworn, or has solemnly affirmed that he will speak the truth, make any statement which is false, and which he either knows or believes to be false, or does not believe to be true ; or who shall instigate any other person so to offend ;

Refusal of a person not amenable to Articles of War to attend Court Martial, or to be sworn, &c.

Shall be delivered over to a Magistrate, who shall proceed against the offender in the same manner as if the offence had been committed before a Criminal Court.

ARTICLE 65.

Any person using any menacing or disrespectful word, sign, or gesture, in the presence of a Court Martial then sitting; or causing any disorder or riot so as to disturb the proceedings

Contempt of Court.

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ACT No. XXIX of 1861.

ings of such Court Martial; or being grossly insubordinate or violent in the presence of a Court Martial ;

Shall, if amenable to these Articles of War, be punished, according to the condition of the offender and the nature and degree of his offence, by the sentence of the same or another Court Martial; and if not amenable to these Articles of War, be delivered over to a Magistrate, who shall proceed against the offender in the same manner as if the offence had been committed before a Criminal Court.

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*The offence of giving false evidence, punishable by General or District Court Martial, with dismissal and fine or imprisonment.*

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ARTICLE 66.

Any Officer or Soldier—

Who shall give false evidence as defined in Article 64 before any General or other Court Martial, or any Military Court entitled to take evidence on oath or affirmation ; or who shall instigate any other person so to offend ;

Shall, on conviction before a General, District, or Garrison Court Martial, be dismissed the service; and shall further be sentenced to forfeit any arrears of pay and allowances due at the time of his dismissal, and may be sentenced to imprisonment with or without hard labor for a term which may extend to three years.

ARTICLE 67.

When the Officer Commanding a Regiment or Corps considers that Crimes admitting of any Soldier under his command, who is charged with less serious notice. any offence declared by the foregoing Articles to be triable by a District or Garrison Court Martial, should be tried by a Regimental Court Martial, he may order the offender to be tried by such Court Martial, and shall report the case to the Officer Commanding the Division, stating the reason for such order.

When



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When the Officer Commanding a Regiment or Corps considers that any Soldier under his Command, who is charged with any offence declared by the foregoing Articles to be triable by a General Court Martial, should be tried by a District or Garrison or Regimental Court Martial, such Commanding Officer may lay a statement of the case before the General or other Officer having authority to convene General Courts Martial, under whose command the offender may be serving, with an application for permission to try the offender by District or Garrison or Regimental Court Martial, and such General or other Officer shall comply with or refuse such application at his discretion. The order of such General or other Officer, when the application is complied with, shall be entered upon the proceedings at the trial of such offender.

Provided that mutiny shall not be considered one of the offences admitting of such discretionary investigation.

ARTICLE 68.

For any offence committed on the line of march, or on board any ship or other vessel, the Officer in command of the Troops may try any Soldier by a Regimental or Detachment Court Martial, and may confirm and execute on the spot any sentence that may be passed.

Offences on the line of march or on board vessels.

Provided that such sentence shall in no case exceed that which a Regimental Court Martial is competent to award ;—and that the proceedings held in all such cases shall be transmitted for the information of the Commander-in-Chief of the Presidency to which such Troops belong, and to the Commander-in-Chief of the Presidency within which such troops shall be serving or to which they are proceeding.

ARTICLE 69.

Any crime not punishable with death, and any disorder or neglect of which any Officer or Soldier is guilty, to the prejudice of Good Order and Military Discipline, may, though not specified in these Articles, be taken cognizance of by Courts Martial, and punished

Crimes not specified.



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punished, according to the nature and degree of the offence, by the sentence of a General, or District, or Garrison, or Regimental Court Martial.

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CHAPTER III.

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*Administration of Justice.*

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ARTICLE 70.

Whenever any Officer or Soldier is accused of any crime which the Commanding Officer of such Officer or Soldier considers should be tried by Court Martial, such Commanding Officer shall order the accused, if he be an Officer or Non-Commissioned Officer, to be put under arrest, or if a Soldier, to be confined until he can be tried by a Court Martial, or discharged by proper authority. No such Officer or Soldier shall be detained in arrest or confinement longer than is avoidable.

Arrest or confinement.

When, in consequence of any resistance, or, from any other circumstance, such arrest or confinement is impracticable, the offender shall be liable to trial and punishment at any subsequent period within the limitations provided in these Articles of War.

Resistance to arrest.

ARTICLE 71.

No person shall be liable to be tried or punished for any offence against the Articles of War, which shall appear to have been committed more than three years previous to the order directing the assembly of the Court Martial whereby he is being, or is to be tried, unless it shall appear that the person accused, by reason of his absentsing himself, or some other manifest impediment, could not be brought to trial within that period; in which case such person shall be liable to be tried at any time not exceeding two years after such impediment shall have ceased.

Limitation of time.

ARTICLE 72.

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ARTICLE 72.

Any person amenable to these Articles of War, who commits any offence against them, may be tried and punished for such offence in any place where he is, in the same manner as if the offence had been committed in such place.

Offenders may be tried elsewhere than where the offence was committed.

ARTICLE 73.

The Commander-in-Chief of the Presidency may appoint a General or other Court Martial, and may confirm, and mitigate, or commute or remit the sentence of such Court. He may issue his warrant to any General or other Officer under his command having the command of any body of troops in the service of Her Majesty, empowering such Officer to appoint General, or District, or Garrison Courts Martial as occasion may require, for the trial of any offence committed by any Officer or Soldier or follower in the service of Her Majesty, not being a European British subject of Her Majesty; and to confirm and mitigate, or commute or remit the sentence of any such Court Martial. No sentence, including forfeiture of additional pay, or of claim to pension on discharge, or of any prospective advantage, shall be carried into effect until confirmed by the Commander-in-Chief of the Presidency to which the offender belongs. The Commander-in-Chief may remit any forfeiture awarded, and may order the restoration of any advantage of which the offender has been deprived by such forfeiture.

Powers of the Commander-in-Chief to appoint Courts Martial.

ARTICLE 74.

Whenever any Native Troops subject to these Articles of War are not attached to the forces of any Presidency, the Governor-General of India in Council shall authorize the Commander-in-Chief of any Presidency to issue his warrant to the General or other Officer having the Command of such troops to appoint Courts Martial in conformity with this Act.

Appointment of Courts Martial for trial of Troops not attached to any Presidency.

*Composition of Courts Martial.*

ARTICLE 75.

Except as hereinafter provided, a General Court Martial shall not consist of less than thirteen Commissioned Officers, unless it be held out of the British Territories in India. When a

Constitution of General Court Martial.

Court

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Court Martial is held out of the British Territories in India, it may consist of seven Commissioned Officers, if a greater number cannot be conveniently assembled. No sentence of a General Court Martial shall be put in execution until after a report shall have been made of the whole proceedings to the Commander-in-Chief of the Presidency or to some other person duly authorized to confirm the same, and until the directions of such Commander-in-Chief or other person as aforesaid shall have been signified thereupon.

ARTICLE 76.

A District or Garrison Court Martial shall consist of not less than seven Commissioned Officers when that number can be conveniently assembled. When that number cannot be conveniently assembled, such Court may consist of not less than five Commissioned Officers.

Constitution of District or Garrison Court Martial.

A District or Garrison Court Martial may be composed of Officers of the same Regiment or Corps as the accused, or of any other Regiment or Corps.

The sentence of a District or Garrison Court Martial shall be subject to confirmation by the Commander-in-Chief of the Presidency, or by some Officer duly authorized to confirm the same.

ARTICLE 77.

A Regimental Court Martial shall consist of not less than five Commissioned Officers when such number can be assembled. When such number cannot be assembled, such Court may consist of three Commissioned Officers. Such Court shall be assembled by order of the Officer Commanding the Regiment. No sentence of a Regimental Court Martial shall be of force until the Commanding Officer shall have confirmed the same. Such Commanding Officer shall have power to remit all sentences whatever passed by such Court, and to cause the offender to be released and to return to his duty.

Constitution of Regimental Court Martial.

*Powers*

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*Powers of Court Martial.*

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ARTICLE 78.

A General Court Martial may sentence—for any crime which by these Articles is made liable to such sentence—any Officer to death or to transportation for life, or for any period not less than seven years, or in cases falling under Article 22 or Article 66, to imprisonment with or without hard labor for any period not exceeding three years, and with or without solitary confinement ; or may sentence any Soldier to death; or to transportation for life, or for any period not less than seven years, or to imprisonment for any period not exceeding fourteen years, for any crimes which are by these Articles of War expressly made liable to any such sentence, and for such crimes only. No Court Martial inferior to a General Court Martial shall have power to pass a sentence of death or transportation or imprisonment for any longer period than three years.

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*Punishments of Commissioned Officers.*

A General Court Martial may sentence a Commissioned Officer to be dismissed the service ; or to be suspended from rank and pay and allowances for a stated period ; or to be placed one or more steps lower in the list of his rank, by an alteration of the date of his Commission, and such Officer shall lose the corresponding benefit of length of service.

No Court Martial inferior to a General Court Martial shall have power to try a Commissioned Officer.

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*Punishments of Non-Commissioned Officers and Soldiers.*

A General or District or Garrison or Regimental Court Martial may sentence a Non-Commissioned Officer to be reduced to the ranks ;—or may sentence a Non-Commissioned Officer or Soldier to be dismissed the service ;—or to be placed



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placed one or more steps lower in the list of the rank which he holds, whereby such Non-Commissioned Officer or Soldier shall lose the benefit of the corresponding length of service;—or to suffer corporal punishment not exceeding fifty lashes;—or to imprisonment, which may be with or without hard labor; and which may include solitary confinement for any portion or portions of such imprisonment, not exceeding fourteen days at a time, nor eighty-four days in any one year, with intervals between the periods of solitary confinement of not less duration than such periods of solitary confinement.

No Soldier shall be kept in solitary confinement more than eighty-four days in any one year, whether by the sentence of one or more Courts Martial, or by order of the Commanding Officer of the Regiment or Corps to which such Soldier belongs.

No sentence of imprisonment shall be awardable by a General Court Martial for any period exceeding two years (except when otherwise expressly provided); nor by a District or Garrison Court Martial for any period exceeding one year; nor by a Regimental Court Martial for any period exceeding six calendar months.

No Non-Commissioned Officer shall be sentenced to imprisonment or corporal punishment without being first reduced to the ranks.

*Punishment for "Disgraceful Conduct."*

A General or District or Garrison Court Martial may, in addition to corporal punishment or to imprisonment, sentence a Soldier convicted of disgraceful conduct to forfeiture of all advantage as to additional pay and claim to pension on discharge, which otherwise might have accrued from the length or nature of his former service; or to forfeiture of such advantage absolutely, whether it may have accrued from past service, or might accrue from future service.

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No Soldier shall be tried for disgraceful conduct by any Court Martial inferior to a District or Garrison Court Martial.

A Court Martial may, in addition to any punishment involving dismissal or discharge, sentence any Officer or Soldier whom it is authorized to try, to forfeiture of arrears of pay and allowances due at the time of dismissal or discharge, or of such portion thereof as may be required to make good any loss or damage arising out of his misconduct. A Court Martial, in addition to any punishment not involving dismissal or discharge, may sentence any Officer or Soldier to be put under stoppages not exceeding, in the case of an Officer, two-thirds of his pay and allowances, and in the case of a Non-Commissioned Officer or Soldier, one-half of his pay and allowances, until any loss or damage arising out of his misconduct be made good.

Every Soldier subjected to confinement in the Quarter Guard, or Defaulter's Room, or in a Solitary Cell, or in any other place of imprisonment, shall forfeit all claim to pay and allowances during such confinement, and shall be entitled to receive subsistence only according to the rates laid down in the Regulations.

ARTICLE 79.

Whenever sentence shall be passed by a Court Martial on an offender already under sentence of imprisonment, such Court may award sentence of imprisonment to commence at the expiration of the imprisonment to which the offender shall have been so previously sentenced, although the aggregate of the terms of imprisonment may exceed the term for which imprisonment could otherwise be awarded by such Court Martial.

*Confirmation and Commutation of Sentences.*

ARTICLE 80.

When a sentence of death shall have been awarded by a General Court Martial, the Commander-in-Chief of the Presidency may confirm such sentence, and cause it to be carried into

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into effect; or may in lieu thereof order the offender, if an Officer, to be transported for life, or for a term not less than seven years: or to be imprisoned for any period not exceeding fourteen years; or if a Soldier, to be transported for life, or for a term not less than seven years, or to be imprisoned with or without hard labor, and with or without solitary confinement, for any period not exceeding fourteen years.

In cases wherein a sentence of transportation has been awarded by a General Court Martial, the Commander-in-Chief of the Presidency may, in lieu thereof, order the offender, if an Officer, to be imprisoned for any period not exceeding fourteen years; or if a Soldier, to be imprisoned with or without hard labor and with or without solitary confinement for any period not exceeding fourteen years. Provided that in any such case, if the sentence of transportation be for any less period than fourteen years, the imprisonment in commutation shall not be for a longer period.

In lieu of a sentence of dismissal, in the case of an Officer, the Commander-in-Chief of the Presidency may order the offender to be suspended from rank and pay and allowances for a stated period.

Any Officer having authority to confirm the sentence of a Court Martial, may commute a sentence of corporal punishment, to dismissal from the service, or to imprisonment without hard labor, and with or without solitary confinement, for any period not exceeding one year, for which such Court might have sentenced the offender for the offence;—or may commute a sentence of imprisonment with hard labor to imprisonment without hard labor, with or without solitary confinement, for the same or for a less period—or to dismissal from the service.

Any Officer having authority to confirm the sentence of a Court Martial, may, in commutation of a sentence on a Non-Commissioned Officer, of corporal punishment, or imprisonment, or of dismissal, direct that such Non-Commissioned



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sioned Officer be reduced to the ranks, or placed lower, in the list of the rank which he holds, whereby such Non-Commissioned Officer shall lose the corresponding benefit of length of service.

ARTICLE 81.

Powers of Commanding Officers of Native Regiments in punishing offences committed by Non-Commissioned Officers and Soldiers and Native Camp-Followers.

The Commanding Officer for the time being of any Regiment or Corps may summarily try any offence against these Articles of War committed by any person subject to these Articles (not being a Commissioned Officer,) and, on conviction, may sentence the offender and carry out such sentence without confirmation or any further authority; provided that such sentence shall not exceed the sentence which a District or Garrison Court Martial might pass.

A Commanding Officer holding a trial under this Article shall be deemed a Court Martial, and the words "Court Martial" in these Articles of War shall be deemed to include a Commanding Officer holding a trial.

The proceedings on such trials by the Commanding Officer shall be conducted in the presence of two or more European or Native Commissioned Officers, and shall be recorded in the English language, and the evidence shall be taken on oath or affirmation, and interpreted by an interpreter upon affirmation. The Commanding Officer shall record the finding and sentence, and the proceedings shall then be signed by such Commanding Officer, and by the Officers in whose presence the trial is held, and shall, without delay, be forwarded to the Officer Commanding the Division, who is hereby authorized to set aside the trial for reasons based on the merits of the case, but not on any merely technical grounds. Every sentence so awarded by a Commanding Officer may be carried out without waiting for its approval by the reviewing Officer.

ARTICLE 82.

Powers of Officers Commanding Detachments, in punishing offences.

An Officer Commanding a Detachment of his own Regiment or Corps may assemble a Regimental Detachment Court Martial;---and an Officer Commanding a Detachment consisting of men of different Regiments or Corps, may assemble

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assemble a Detachment or Line Court Martial. Every Court so assembled shall be constituted in the manner provided for a Regimental Court Martial under the provisions of these Articles of War, and shall have the like powers.

The provisions of these Articles of War, which relate to a Court Martial held in a Regiment or Corps, shall, in all practicable cases, be taken to apply to a Court Martial held in a Detachment.

No Officer on detached command of less than three troops or companies, or of a Detachment numerically equal to three troops or companies, and not being on the line of march or on board a ship or other vessel, shall carry into effect any punishment awarded by a Court Martial held by his order, until the sentence shall have been confirmed by the Officer Commanding the Regiment or Corps to which the offender belongs, or by the nearest Superior Officer holding a Command of not less than a Regiment, who is hereby authorized to confirm every such sentence in like manner as an Officer Commanding a Regiment or Corps might do. Provided that in detached situations beyond the Sea or out of the British Territories in India, or when on service in the field, or in cases where an immediate example is necessary and reference cannot be made to such Commanding or Superior Officer without detriment to the service, the Officer Commanding such Detachment may exercise the powers which are vested in an Officer Commanding a Regiment or Corps.

The Commanding Officer of such Detachment, and the Commanding Officer of any European Detachment to which native details of less strength than three troops or companies are attached; and any Commissary of Ordnance or other Officer in charge of any arsenal, ordnance establishment, or any camp equipage depôt, may summarily try any offence against these Articles of War, committed by any person under his command, who is subject to such Articles (not being a Commissioned Officer); and may on conviction sentence such offender, and carry out such sentence without confirmation or any further authority; provided that such sentence shall not exceed the powers of a Regimental Court Martial.

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Such Commanding Officer or other Officer holding a trial under this Article shall be deemed a Court Martial, and the words "Court Martial," in these Articles of War, shall be deemed to include such Commanding Officer or other Officer holding a trial.

The proceedings on such summary trial shall be conducted, so far as may be practicable, and shall be recorded, in the same manner as is provided in Article 81 for summary trials by an Officer Commanding a Regiment or Corps, and shall, in like manner, be signed and forwarded to the Officer Commanding the Division within which such Detachment shall be at the time, who is hereby authorized to set aside the trial for the same reasons that an Officer Commanding a Division is authorized by Article 81 to set aside a trial by an Officer Commanding a Regiment or Corps. Provided that every sentence so awarded by an Officer Commanding any such Detachment, or by any other Officer holding a trial under this Article, may be carried out without waiting for its approval by the reviewing Officer.

ARTICLE 83.

For light offences, a Commanding Officer may, without the intervention of a Court Martial, award extra drill, restriction to barrack limits or within the lines of the Regiment or Camp, confinement in the Quarter Guard or Defaulters' Room or in a Solitary Cell, removal from Staff situations, or acting appointments; or may order any Soldier to be employed in piling and unpling shot, and in cleaning accoutrements of men in hospital. But none of these punishments shall be awarded by sentence of a Court Martial. Any Soldier, while undergoing punishment under this Article, shall be liable to be ordered to attend ordinary drill.

The Commander-in-Chief of the Presidency shall prescribe the periods not exceeding which offenders shall be liable to drill or confinement or restriction to local limits, as authorized by this Article.

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ARTICLE 48.



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ARTICLE 84.

Punishments for breach  
of Cantonment Regula-  
tions.

For any offence in breach of the Rules and Regulations of any Cantonment, the Commanding Officer of such Cantonment may sentence the offender (provided he be not a European British subject or an Officer or Soldier), notwithstanding he is neither amenable to any Articles of War, nor under the Military command of such Commanding Officer, to pay a fine not exceeding fifty Rupees; and in default of payment of such fine, and in lieu thereof, to imprisonment for any period not exceeding thirty days, if the fine be not sooner paid; and the Officer in charge of any Jail, on the delivery to him of the person of the offender accompanied by a warrant under the hand of such Commanding Officer, shall give effect to such imprisonment.

ARTICLE 85.

Punishment of offences  
committed by Camp  
followers.

For any offence in breach of good order, a Commanding Officer of any Regiment, Corps, or Detachment, may sentence any follower of such Regiment, Corps, or Detachment under his command to imprisonment for any period not exceeding seven days; or, if the offender be not of a degree superior to that of a menial servant, to undergo Corporal punishment not exceeding twelve strokes of a rattan; or if the offender be of a degree superior to that of a menial servant, to fine not exceeding fifty Rupees, and in default of payment to imprisonment for a period of thirty days, if such fine be not sooner paid.

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*Execution of Sentences of Courts Martial.*

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ARTICLE 86.

Sentence of Death.

In awarding a sentence of death, a General Court Martial shall specify that the offender shall "suffer death by being hanged by the neck until he be dead," or "by being shot to death,"

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death," as the Court in their discretion shall deem expedient, and such sentence, if confirmed, shall be carried into effect accordingly.

ARTICLE 87.

Whenever the sentence of a General Court Martial shall adjudge transportation, or sentence of death shall be commuted by competent authority to transportation, the offender shall be delivered over to the Officer in charge of the nearest Jail, and such Officer, in giving effect to the sentence, shall be guided by such order as he shall receive from the local Government.

Whenever any sentence of a Court Martial shall adjudge imprisonment with or without hard labor, or with solitary confinement or both, or whenever the sentence of a Court Martial shall be commuted to any such imprisonment, it shall be the duty of every Officer in charge of a Jail, to give effect to such sentence on the offender being delivered into his custody, with an authenticated copy of the sentence passed on the offender.

ARTICLE 88.

The Commander-in-Chief of the Presidency may, from time to time, direct that any person sentenced to imprisonment by a Court Martial, may be imprisoned in any public Jail or in any other fit place.

ARTICLE 89.

When any person subject to these Articles of War is confined in any public Jail or other place not under Military control under a sentence of imprisonment passed by a Court Martial, the local Government of the Presidency or place in which such place of confinement is situate, may order the removal of such person from such place of confinement to any other public Jail or other fit place of confinement within the

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the Territories of such local Government. The period for which such person is in custody during such removal shall be reckoned as part of the original period of imprisonment for which such person was sentenced. The Governor-General of India in Council may order the removal of any such person from any place of confinement in British India to any other place of confinement therein.

ARTICLE 90.

The Commander-in-Chief of any Presidency shall have power to pardon any person belonging to the Military Forces of such Presidency, who shall have been convicted by a Court Martial of any offence against the Articles of War, which offence, wherever committed, is not punishable otherwise than by sentence of a Court Martial. Instead of granting a full pardon to any such person, the Commander-in-Chief of the Presidency may remit any part of the punishment awarded for the offence.

Powers of Commander-in-Chief of a Presidency to pardon certain offenders.

In any such case the Commander-in-Chief of the Presidency shall, together with a copy of the warrant or other instrument under which the offender is kept in custody in execution of the sentence, issue a warrant under his own hand, setting forth the offence of which the offender has been convicted, and pardoning or remitting such part of the punishment awarded for such offence as to him shall seem fit.

The said warrant shall be countersigned by the Magistrate of the zillah or city in which the offender is undergoing his sentence; or, if he is confined in any prison within the limits of a Supreme Court of Judicature, shall be countersigned by a Judge of such Court; if it shall appear to such Magistrate or Judge that the offence, wherever committed, is not punishable by any authority other than that of a Court Martial; but not otherwise.

Every Sheriff, Jailor, or other person having custody of any offender under sentence of a Court Martial, shall obey and give effect to any warrant of the Commander-in-Chief of the Presidency, duly countersigned as aforesaid,  
for



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for the pardon and release of any offender in his custody, or for the remission of any part of the sentence of any such offender.

ARTICLE 91.

Every Soldier sentenced under these Articles of War to imprisonment with hard labor for either a Military or Non-Military offence, shall be struck off the strength of the Regiment or Corps to which he belongs from the date of confirmation of such sentence; and no Soldier who has undergone such imprisonment for any period, shall be capable of being re-admitted in the ranks, or of receiving pension on discharge.

ARTICLE 92.

Any Soldier sentenced for disgraceful conduct, to dismissal, or to corporal punishment, or to imprisonment with hard labor, shall, on any such sentence being confirmed, be dismissed with ignominy.

ARTICLE 93.

In every case wherein a fine or forfeiture of arrears of pay, or stoppages, shall be adjudged by a Court Martial, any pay or public money due to the offender or that may become due to him, shall be available, with the sanction of the Commander-in-Chief of the Presidency for the payment of the amount so adjudged.

No Soldier sentenced to pay a fine, or to stoppages to make good any loss or damage arising out of his misconduct, shall be continued under forfeiture or stoppages under any one such sentence, for any period exceeding one year; and no Soldier shall be at any one time placed under forfeiture or stoppages exceeding in the whole the amount of half his pay and allowances, nor be liable to be put under further stoppages

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stoppages while actually under stoppages to the amount of half of his pay and allowances.

ARTICLE 94.

Trials by Courts Martial may be carried on at any time without restriction.  
Time for trials by Courts Martial. The hour of original assembly of the Court shall be named by the Officer convening the Court, but the adjournment of the Court and the hour of its re-assembly shall be determined by the Court itself.

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*Forms of Proceeding.*

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ARTICLE 95.

Except as hereinafter provided, a Judge Advocate, or a European Officer of not less than ten years' service, shall be appointed to conduct the proceedings at every General Court Martial, and a European Officer of not less than four years' service, or any Adjutant of a Regiment where such Officer is available, shall be appointed to conduct the proceedings at all other Courts Martial.

ARTICLE 96.

An interpreter shall be appointed to every Court Martial. If no interpreter is available at the Station where the Court Martial sits, the Officer Commanding at such Station shall appoint any competent person under his command to perform the duty of interpreter. Where no interpreter or other competent person is available, the Superintending Officer at the Court Martial shall perform the duty of interpreter.

ARTICLE 97.

At every Court Martial the Senior Officer shall sit as President without being appointed by warrant. Rissaldar Majors and Subadar Majors are to take precedence according to the  
President,

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to the dates of their Commissions, and above all Native Officers holding the rank of Subadar or Rissaldar. Sirdar Bahadoors and Bahadoors are to take rank only according to their respective Commissions of Rissaldar Major, Subadar Major, Rissaldar, Subadar, or Jemadar. Rissaldars and Rissaidars are to take rank with Subadars, according to the dates of their respective Commissions.

In case of the death or unavoidable absence of the President, the  
Death or. absence of President. next Senior Member shall take the place of President, and the trial shall proceed, if the Court shall still consist of not less than the smallest number of Members of which such Court is directed to consist by these Articles of War.

ARTICLE 98.

No finding or sentence of a Court Martial shall be revised more than  
Revision of sentence. once, and no evidence shall be received on such revision except evidence relating to previous convictions and general character. For the purpose of such revision, the President and all the Members shall be convened if possible. But if any of them should be unavoidably absent, the remaining Members may proceed with such revision, provided they are not fewer than the smallest number for each description of Court Martial directed in these Articles respectively. When all the same Members do not meet, the circumstances are to be duly certified on the face of the proceedings.

ARTICLE 99.

The Members of a Court Martial are to preserve order, and in giving  
Manner of voting. their votes upon all matters are to begin with the junior in rank. In all cases where a sentence of Death is not awarded, the decision shall be by the majority of Members present, provided the number of Members present be not less than that required by the preceding Articles. In case of an equality of votes, the decision shall be in favor of the prisoner. The President at a Court Martial shall vote with the other Members, and shall have no casting vote, except upon questions other than the finding and the sentence.

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ARTICLE 100.

No Court Martial shall pass a sentence of Death unless two-thirds of the Members present concur in such sentence, or four concur where the Court consist of five Members, or five concur where the Court consist of seven Members.

*Affirmations.*

ARTICLE 101.

On the assembly of a Court Martial, the Judge Advocate or European Superintendenting Officer shall administer to the interpreter the following affirmation :—

“ I, A. B., solemnly affirm in the presence of Almighty God, that I will faithfully interpret and translate the proceedings of the Court, and that I will not divulge the sentence until it shall have been published by authority; and, further, that I will not disclose or discover the vote or opinion of any particular Member of the Court, unless required to give evidence thereof by a Court of Justice or Court Martial, in due course of law.”

In case of the unavoidable absence of an interpreter, the European Superintendenting Officer of a Court Martial other than a General Court Martial shall make the affirmation prescribed for the interpreter.

The Judge Advocate or Superintendenting Officer shall then cause the following affirmation to be made by each Member :—

“ I, A. B., solemnly affirm in the presence of Almighty God, that I will duly administer justice according to the Articles of War, without partiality, favor, or affection, and, if any doubt shall arise, then, according to my conscience, the best of my understanding, and the custom of War in the like cases; and that I will not divulge the sentence of the Court until it shall

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shall be published by authority; and, further, that I will not disclose or discover the vote or opinion of any particular Member of the Court, unless required to give evidence thereof by a Court of Justice or a Court Martial in due course of law."

Judge Advocate's Affirmation.

The following affirmation shall then be administered by the interpreter to the Judge Advocate or Superintending Officer :

" I, A. B., solemnly affirm in the presence of Almighty God, that I will not, upon any account whatsoever, disclose or discover the vote or opinion of any particular Member of the Court Martial, unless required to give evidence thereof as a witness by a Court of Justice or a Court Martial in due course of law, and that I will not, unless it be necessary for the due discharge of my official duties, disclose the sentence of the Court, until it shall be published by authority."

It shall be necessary to administer the foregoing affirmations on the commencement of every fresh trial before the same Court.

ARTICLE. 102.

Witness' oath or affirmation.

Every person who gives evidence at a Court Martial shall be examined on oath or affirmation where an affirmation is allowed.

The affirmation shall be to the following effect :—

" I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."

If any person after making such affirmation shall wilfully and falsely state any matter or thing which amounts to the offence of giving false evidence as defined in Article 64, such person shall be subject to the same punishment as persons convicted of that offence.

ARTICLE 103.



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ARTICLE 103.

When any person required as a witness before a Court Martial is not amenable to Military Law, the Judge Advocate or Officer Commanding shall apply to the Magistrate within whose jurisdiction the witness resides to cause his attendance before such Court Martial. Such Magistrate shall issue his summons to such witness to attend before such Court Martial in the same manner as if the witness were required in the Court of such Magistrate.

ARTICLE 104.

If any Officer or Soldier subject to these Articles of War shall have been illegally absent from his duty for the space of two months, a Regimental Court of Enquiry composed of three Commissioned Officers, of whom all may be European or all Native, or one or more may be European and one or more Native, shall forthwith assemble, and having received proof of the fact on oath or affirmation, shall declare such absence and the period thereof; and the Officer Commanding the Regiment or Corps shall record the declaration of such Court of Enquiry thereon in the Regimental Books: and if such Officer or Soldier shall not afterwards surrender or be apprehended, such record shall have the legal effect of a conviction for desertion. If such Officer or Soldier shall surrender or be apprehended after such record shall have been so entered, such record, or copy thereof, purporting to bear the signature of the Officer having the custody of the Regimental Books, shall, on the trial of such Officer or Soldier on a charge for desertion, be admissible in evidence of the facts therein recorded; and on proof of the identity of the prisoner with the Officer or Soldier therein mentioned, he may be found guilty of desertion.

ARTICLE 105.

If, upon the trial of any Officer or Soldier for desertion, it shall be proved that such Officer or Soldier has been absent without leave, or has overstayed his leave, for the space of two months, such proof shall be deemed sufficient presumptive evidence of desertion.



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presumptive evidence of the desertion of such Officer or Soldier, and shall be sufficient to convict him of the offence of desertion, unless he shall prove that such unauthorized absence was not wilful on his part, or shall otherwise rebut the presumption of desertion arising from proof of his absence without leave.

ARTICLE 106.

If upon the trial of such Officer or Soldier for desertion or for absence without leave, he shall state in his defence that his unauthorized absence was not wilful, or that he was detained in his village from sickness, or shall advance any other sufficient excuse for his absence, or any matter sufficient to rebut any presumptive evidence of desertion, and shall refer to any European, Civil or Military Officer of Government in support of his statement ; or if it shall appear to the Court Martial that the truth or falsehood of such statement may be ascertained by reference to any such Civil or Military Officer of Government, it shall be the duty of the Court to address such Civil or Military Officer on the subject, and to adjourn the proceedings until the reply of such Officer is received. The reply of such Officer, if favorable to the prisoner, shall be admissible in evidence, and have the same effect as if the statement had been made before the Court by such Officer in person on oath or affirmation, and proof of the handwriting of such Officer shall not be necessary. Should any Court before which a prisoner is being tried be dissolved prior to the receipt of the reply to any communication made under this Section to any Civil or Military Officer, a fresh Court may be ordered, and the trial shall be commenced anew before such Court.

Reference to Government Officer as to the truth of statement concerning cause of absence.

ARTICLE 107.

For the prompt and instant repression of irregularities and crimes which may be committed by troops in the field and on the line of march, Provost Marshals shall be appointed by the Commander-in-Chief of the Presidency or the Officer Commanding the forces in the field, and the powers of such Provost Marshals shall be regulated according to the established usages of War and Rules of the service.

Powers and Duties of Provost Marshals.

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The duties of the Provost Marshal so appointed are to take charge of prisoners confined for offences of a general description ; to preserve good order and discipline; and to prevent breaches of the same by Soldiers and followers of the Army. The Provost Marshal may punish on the spot, on the same day, any Soldier or follower who, in his view, or in the view of any of his assistants, shall commit any breach of good order and Military discipline : Provided that the punishment be limited to the necessity of the case, and accord with the orders which the Provost Marshal may, from time to time, receive from the Officer commanding the troops. If the Provost Marshal or any of his assistants shall not see the offender actually commit the crime, but sufficient proof can be obtained of the offender's guilt, a report shall be made to the Commander of the troops, who is empowered to deal with the case as he may deem most conducive to the maintenance of good order and Military discipline.

ARTICLE 108.

In any Presidency where the Native Troops have hitherto been authorized Trials by European Courts Martial. to claim to be tried by European Courts Martial, every person amenable to these Articles of War who is under orders for trial by a Court Martial, may, as of right, claim to be tried by European Officers. When such claim is made, the Court, whether a General, District, Garrison, or Regimental Court Martial, shall be composed of European Commissioned Officers, and the number of Members, and the proceedings shall be governed in all respects by the provisions of these Articles.

It shall be competent to the Governor General of India in Council by a General Order to extend the privilege of claiming to be tried by European Courts Martial to any Native Troops.

It shall further be competent to the Governor-General of India in Council, or to the Governor in Council of the Presidency, by an Order in Council, to direct that any Court Martial may be composed of European Commissioned Officers. The proceedings of such Courts Martial shall be regulated in every respect

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respect as directed in these Articles of War for Native Courts Martial, except that it shall not be necessary to appoint an Officer to conduct the proceedings of such Court Martial.

ARTICLE 109.

It shall be competent to the Governor-General of India in Council or the Governor-General in Council may by order empower Generals &c. to appoint General or District or Garrison Courts Martial. Governor in Council of any Presidency, from time to time, by an order in Council, to empower every General or other Officer having the Command of troops in the service of Her Majesty, or any such General or other Officer, to appoint General or District or Garrison Courts Martial, as occasion may require, for the trial of any Officers, Soldiers, or Followers, subject to these Articles of War, who may be charged with any offence punishable by the said Articles, which, in the judgment of such General or other Officer, requires to be punished without delay; and also to confirm and carry into effect, immediately or otherwise, any sentence of such Court Martial, or to commute, mitigate, or remit any such sentence; or if he shall deem it necessary, to refer any such sentence to the Commander-in-Chief of the Presidency for his orders.

Any General Court Martial, which may be appointed under the authority of this Article, shall be appointed by the Senior Officer on the spot, and shall consist of not less than five Commissioned Officers, the number to be fixed by the General or other Officer appointing the Court Martial. The order in Council may direct that a General Court Martial to be appointed under the provisions of this Article shall consist wholly of European Commissioned Officers or of Native Commissioned Officers; and in such case, the Officer appointing the Court Martial shall determine whether the same shall consist of European Officers or of Native Officers. Every General Court Martial appointed under the authority of this Article shall have all the powers of a General Court Martial specified in the 78th Article, and sentence of death, or other punishment to which the offender is liable by these Articles, may be awarded by such Court Martial, if a majority of the Members present concur in the sentence.

It shall not be necessary to appoint a Judge Advocate to conduct the proceedings of a European Court Martial under this Article.

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CHAPTER IV.

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CHAPTER IV.

*Effects of the Dead.*

ARTICLE 110.

When any Officer or Soldier dies or is killed in the service, or any other person receiving public pay who is subject to these Articles of War in any department belonging to the Army, dies or is killed in the field, the Officer Commanding the Regiment, Corps, or Detachment, or the Officer in charge of the department to which such Officer or Soldier or other person belongs, shall, if no heir or executor be present, secure his effects, and direct an inventory thereof to be taken. A duplicate shall be lodged in the Office of the Adjutant, or Officer in charge of the department to which such Officer, Soldier, or other person belongs.

ARTICLE 111.

If there be no heir or executor on the spot, the effects are to be publicly sold. The Officer Commanding the Regiment or Corps or Detachment, or the Officer in charge of the department to which the deceased Officer, Soldier, or other person belonged, after discharging the debts of the deceased, namely, the expense of funeral ceremonies, his debts in camp or quarters, and Regimental debts of every description, shall account for the residue to the heir or heirs declared by will, whether written or verbal, or nominated in the Regimental register, or in failure of such to the legal representative of the deceased; and in the event of no executor, heir, or other representative of the deceased attending and establishing his claim within twelve months from the date of the casualty, the amount in the hands of the Officer having charge of the estate shall be remitted to the General Treasury at the Presidency.

ARTICLE 112.

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ARTICLE 112.

The effects of deserters are to be publicly sold, and the proceeds, after payment of Regimental debts, remitted by the Officer Commanding the Regiment or Corps to which the deserter belongs, to the General Treasury at the Presidency, or appropriated according to the rules obtaining in such Presidency.

Sale of deserter's effects.

CHAPTER V.

*Miscellaneous.*

ARTICLE 113.

All powers and provisions contained in these Articles relating to a Commander-in-Chief shall, unless when otherwise provided, be construed to extend to the Officer Commanding the forces for the time being in any Presidency.

Construction of the Articles as regards a Commander-in-Chief.

ARTICLE 114.

All powers and provisions contained in these Articles relating to Soldiers shall be construed to extend to Non-Commissioned Officers, unless when otherwise provided.

Construction of the Articles as regards Soldiers.

ARTICLE 115.

When any portion of the troops belonging to any Presidency shall be serving within the limits of any other Presidency, such troops shall be considered as placed, during such service, under the orders and authority of the Commander-in-Chief or other Officer Commanding

Troops serving out of their own Presidency.



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Commanding the forces of the Presidency within which they are serving, for all the purposes of these Articles of War, in the same manner as if they belonged to such Presidency; and all the provisions of these Articles of War, which relate to the trial and punishment of offenders belonging to the Presidency within which the trial is held, are hereby declared applicable to the trial and punishment of offenders serving within such Presidency. Provided that it shall be lawful for the Governor-General of India in Council, to direct that the troops, or any part thereof, of any Presidency, whilst serving without the limits of such Presidency, shall continue under the orders and authority of the Commander-in-Chief or Officer Commanding the forces of the Presidency to which they belong for all the purposes of these Articles.

ARTICLE 116.

Any Officer Commanding any portion of Her Majesty's troops serving in any place out of Her Majesty's Territories, or out of the Territories of those States in alliance with Her Majesty in which Her Majesty's forces are permanently stationed, shall, upon complaint made to him of any offence committed against the property or person of any inhabitant or resident in any such place by any person serving with, or belonging to, Her Majesty's Army, being under the immediate Command of such Officer, summon and cause to assemble a General Court Martial, which shall consist of not less than three Officers, for the purpose of trying any such person, notwithstanding such Officer shall not have received any warrant empowering him to assemble Courts Martial; and every Court Martial so assembled shall have the same powers in regard to summoning and examining of witnesses, the trial of, and sentence upon such person, as are granted by these Articles to General Courts Martial. Provided that no sentence of any such Court Martial shall be executed until the Officer Commanding-in-Chief the force to which the person so convicted and sentenced belongs, shall have approved and confirmed the same; except where such sentence shall not exceed the powers granted by these Articles to a District or Garrison Court Martial, in which case the Officer by whom the Court is convened is authorized to confirm, and commute, or mitigate, or remit the same; reporting the proceedings to the Officer Commanding-in-Chief.

ARTICLE 117.



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ARTICLE 117.

No person who shall have been acquitted or convicted by a Court Martial of any offence, shall be liable to be tried a second time by the same or any other Court Martial for the same offence. No person to be tried a second time for the same offence. Provided that any person may be tried for the offence of murder, and punished for that offence, notwithstanding he may have been tried and punished for the act which caused death, if at the time of his conviction for the said act death shall not have resulted or shall not have been known by the Court which passed sentence to have resulted.

When any person subject to these Articles of War shall have been found guilty by a Court Martial of any Military offence, such Court Martial shall enquire into and receive evidence of any previous conviction of such person before a Court Martial or a Court of Justice, and shall enquire into the general character of such person, if a Soldier, for the purpose of apportioning the punishment to which he is liable to be sentenced for the offence of which he has been so found guilty. But no such evidence shall, in any case, be received until the Court shall have ascertained that such person had previously to his trial received notice of the intention to produce such evidence on the same. And it is hereby directed that such notice shall be given to all persons previous to trial.

ARTICLE 118.

Any Officer or Soldier, who thinks himself wronged by his Superior or other Officer, is to complain thereof to the Officer Commanding his troop or company; and if his grievance be not redressed, may further complain to the Officer Commanding the Regiment or Corps to which he belongs, who is hereby required to examine into such complaint, or remit it to his Superior Authority, as the circumstances may require. Complaints against Superior Officers. If the complaint so preferred to the Commanding Officer should appear to be frivolous or groundless, the Officer or Soldier preferring it shall be liable to be punished according to the sentence of a General or other Court Martial; provided that such Officer or Soldier shall not on such account be liable to be sentenced to dismissal, nor to suffer corporal punishment or imprisonment with hard labor.

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Any

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ARTICLE 119.

Any Officer or Soldier, who shall be taken prisoner by the enemy, shall forfeit all claim to pay and allowances during the period of his remaining a prisoner, and until he shall again return to the service. If such Officer or Soldier can then establish, before a Court Martial, that he was unavoidably taken prisoner in the course of service, that he resisted as long as he was able, that he did not serve with or assist the enemy, and that he returned as soon as possible to the service, he shall be entitled, after the finding of such Court Martial shall have been confirmed by the Commander-in-Chief of the Presidency, to receive either the whole or such portion of his arrears of pay and allowances as the local Government shall determine.

ARTICLE 120.

Every Officer or Soldier or follower in receipt of any public pay, who is imprisoned under the sentence of a Court Martial, or a commuted sentence, or under the sentence of a Court of Criminal Judicature, shall, during the term of such imprisonment, if such imprisonment does not involve dismissal under Article 91, receive subsistence only, to the amount of his pay proper, according to the rates laid down in the Regulations.

ARTICLE 121.

When before the passing of these Articles of War any Court Martial or any Special Commissioner shall have sentenced any person subject to the Articles of War for the Native Army in force at the date of such sentence, to transportation for any term less than the term of his life, for an offence punishable under the Articles then in force with transportation for life, such sentence, to the extent of the punishment awarded thereby, shall be deemed as valid and effectual as if the offender had been sentenced to transportation for life.

ARTICLE 122.

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ARTICLE 122.

When before the passing of these Articles of War any Court Martial or any Special Commissioner shall have sentenced any person subject to the Articles of War for the Native Army in force at the date of such sentence to imprisonment with hard labor for an offence for which by the Articles of War then in force a sentence of simple imprisonment could lawfully be passed, such sentence shall be deemed valid and effect; and all persons are hereby indemnified for any thing done in pursuance of such sentence.

ARTICLE 123.

When before the passing of these Articles of War any Officer Commanding a Regiment or Corps and exercising Magisterial powers, shall have sentenced to punishment any person subject to the Articles of War for the Native Army in force at the date of such sentence, such sentence shall be deemed valid, and shall be carried into effect, notwithstanding that such sentence was passed by such Officer in any part of the British Territories where he was not authorized to exercise such Magisterial powers. Provided such sentence be one which it would have been within the competency of such Officer to pass within the Territories where he was authorized to exercise such powers.

CHAPTER VI.

*Mode of dealing with offences not Military.*

ARTICLE 124.

When any Officer or Soldier, in any place within the jurisdiction of any Criminal Court established by Her Majesty or the Government of India or any local Government, is accused of any offence triable by such Court, he shall be delivered over to a Magistrate to be proceeded against according to law.

All



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All Officers and Soldiers are hereby required to assist the Officers of Justice in apprehending and securing any person so accused.

ARTICLE 125.

Crimes to be tried by Courts Martial where no regular Criminal Tribunals exist.

In any place out of the British Territories in India, such offences, when committed by Officers or Soldiers, shall be cognizable by Courts Martial.

ARTICLE 126.

Offences cognizable by General Courts Martial.

General Courts Martial shall have cognizance of offences punishable with

Death;

Transportation ;

Imprisonment for a period that may extend to seven years or to fourteen years.

ARTICLE 127.

District or Garrison Courts Martial shall have cognizance, ordinarily, of offences punishable with imprisonment for a period which may extend to three years. District or Garrison Courts Martial shall also by special order of the Officer Commanding the forces have cognizance of offences of which a General Court Martial may take cognizance (not punishable with death or transportation for life), with power to sentence to imprisonment for any such offence for a period which may extend to three years.

ARTICLE 128.

Regimental, Detachment, or Line Courts Martial, shall have cognizance, ordinarily, of offences punishable with imprisonment for a period not exceeding six calendar months, and, by special order of the Officer Commanding the forces, of offences ordinarily cognizable by District or Garrison Courts Martial, with

power

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power to sentence persons convicted of such offences to imprisonment for a period not exceeding six calendar months.

*General Courts Martial.*

ARTICLE 129.

Any Officer or Soldier who shall be convicted by a General Court Martial of causing death, shall be deemed to have committed murder—  
Punishment of death.

1st. If the act by which death was caused, was done with the intention of causing death; or

2nd. If it was done with the intention of causing such bodily injury as the offender knew to be likely to cause the death of the person to whom the harm was caused; or

3rd. If it was done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death; or

4th. If the person committing the act, knew that it was so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and if he committed such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Any Officer or Soldier convicted of murder shall be sentenced to be hanged by the neck till he is dead, or to transportation for life.

ARTICLE 130.

Any Officer or Soldier who shall be convicted by a General Court Martial of any of the offences hereinafter mentioned, accompanied with an attempt to commit murder, or with wounding or other corporal injury to any person endangering the life of such person; that is to say,—  
Offences punishable by imprisonment or transportation for life.

1st.

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1st. Breaking, or attempting to break, by day or night, into any dwelling-house, tent, boat, or other habitation, or into any building or place used for the preservation of property, with the intent to rob or steal;

2nd. Robbery or attempt to rob;

3rd. Stealing or attempting to steal in a house, or from the person—

Shall be sentenced by such General Court Martial to transportation for life, or for any period not less than seven years, or to imprisonment with hard labor for a period that may extend to fourteen years.

ARTICLE 131.

Any Officer or Soldier who shall be convicted by a General Court Martial—  
Robbery, &c., accompanied with wounding, &c. not endangering life.

Of any offence specified in Clauses 1, 2, and 3 of the last Article, accompanied with wounding or other corporal injury to any person not endangering the life of such person ;——or

ARTICLE 132.

Of robbery by open violence, or dacoity, that is to say, going forth in the day or in the night with an offensive weapon, or in a gang with or without an offensive weapon, with the intention of committing robbery, and by force or intimidation robbing or attempting to rob any person in any place, or attacking by open violence any house, or place of habitation, or any place in which property may be kept, for the purpose of robbery ; ——or

ARTICLE 133.

Of breaking, or attempting to break into any dwelling-house, tent, boat, or other place of habitation, between sunset and sunrise, with intent to rob or steal ;——or  
House-breaking by night.

Of



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ARTICLE 134.

Of breaking into any such place of habitation, or into any place used for the preservation of property, and stealing therefrom property the value of which shall exceed one hundred Rupees ;——or

ARTICLE 135.

Of purchasing or receiving plundered or stolen property, knowing it to have been obtained by robbery, by open violence, or by theft or robbery, aggravated as described in Article 130 or Article 131 ;——or

ARTICLE 136.

Of an unnatural crime ;——or

ARTICLE 137.

Of Rape;—

Shall be sentenced by such General Court Martial to imprisonment with hard labor for a period not exceeding fourteen years.

ARTICLE 138.

Any Officer or Soldier who shall be convicted by a General Court Martial—  
Of the offence of culpable homicide not amounting to murder ;——or

ARTICLE 139.

Of the offence of wounding, or otherwise causing any corporal injury to any person with intent to murder, whether the person wounded or otherwise injured be the person whom the offender

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offender intended to murder, or another; or of attempting to commit murder by any means whatsoever ; ——

Shall be sentenced by such General Court Martial to imprisonment with or without hard labor for a period not exceeding fourteen years.

ARTICLE 140.

Any Officer or Soldier who shall be convicted by a General Court Martial—

Premeditated affray, attended with Culpable Homicide.

Of premeditated affray, attended with culpable homicide not amounting to murder, or severe wounding, or other aggravating circumstance ;——or

ARTICLE 141.

Intentionally doing corporal injury.

Of intentionally wounding, maiming, or otherwise doing corporal injury to any person ;——or

ARTICLE 142.

Accidentally doing corporal injury to one person when intended to be done to another.

Of accidentally wounding, maiming, or otherwise doing corporal injury to any person with the intention of doing such injury to another person ;——or

ARTICLE 143.

Of breaking into any dwelling-house, tent, boat, or other place of habitation, or into any place used for the preservation of property, between sunrise and sunset, with intent to steal therein ;——or

ARTICLE 144.

Theft in a dwelling-house.  
——or

Of stealing from any habitation, or from any person, any property exceeding three hundred Rupees in value;

ARTICLE 145.

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ARTICLE 145.

Buying or receiving  
stolen property exceeding  
300 Rupees in value.

Of having purchased or received any property so  
stolen, exceeding in value three hundred Rupees,  
knowing it to have been stolen ;—or

ARTICLE 146.

Arson.

Of Arson ;—or

ARTICLE 147.

Of enticing and taking away, or of causing to be enticed or taken  
away for any unlawful purpose, any unmarried woman  
Enticing unmarried wo-  
man under 15 years. under the age of fifteen years ;—or

ARTICLE 148.

Stealing children under  
8 years.

Of stealing a child under the age of eight years ;  
—or

ARTICLE 149.

Of counterfeiting, or causing or procuring the fraudulent fabrication or  
alteration of any written deed, or printed paper of any  
Counterfeiting or fabri-  
cating Deed, &c. description ; or any counterfeit seal or signature thereto ;  
or the illicit imitation of any public stamp or stamped paper issued by  
Government; or of using, selling, or disposing of such stamped paper,  
knowing the same to be counterfeit ; or of fraudulently issuing and publishing  
as true, or of fraudulently giving effect to any fabricated deed or paper  
knowing it to be a forgery ;—

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ARTICLE 150.

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ARTICLE 150.

Of forging or procuring to be forged any counterfeit coin, in imitation of  
any of the gold, silver, or copper coin of the Govern-  
Counterfeiting Coin, &c. ment of India, or of any coin usually received as money  
in the British Territories in India ; or of clipping, filing, drilling, or defacing  
any such coin ; or of paying or tendering in payment counterfeit Coin, Bank  
Notes, or other Securities for money, knowing the same to be counterfeit, al-  
though such Notes or Securities shall be incomplete;—

Shall be sentenced by such General Court Martial to suffer imprisonment  
with or without hard labor for any period not exceeding seven years.

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*District or Garrison Courts Martial.*

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ARTICLE 151.

It shall be competent to the Commander-in-Chief of the Presidency,  
Powers of District or and to any Officer having authority to convene District  
Garrison Courts Martial. or Garrison Courts Martial, to cause offenders, not being  
Commissioned Officers, accused of any of the offences specified in these Articles  
of War, except offences for which the punishment of death or transportation  
for life is provided, to be tried for such offences before a District or Garrison  
Court Martial, and such Court shall have power, on conviction, to sentence  
any such offender to imprisonment with or without hard labor for any period  
not exceeding three years.

ARTICLE 152.

Stealing property not  
exceeding 300 Rupees, but  
exceeding 50 Rupees in  
value.

Any Officer or Soldier who shall be convicted by a  
General, District, or Garrison Court Martial—

Of

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Of stealing from any habitation, or from the person, any property of value not exceeding three hundred Rupees, but exceeding fifty Rupees ;—or

ARTICLE 153.

Of having purchased or received any stolen property of value not exceeding three hundred Rupees, knowing it to have been stolen, but not under aggravating circumstances ;—or

Buying or receiving stolen property not exceeding 300 Rs. in value.

ARTICLE 154.

Of dishonestly having stolen property in his possession, and of having dishonestly kept possession of such property after becoming aware of its having been stolen ;

Dishonestly having stolen property in possession

Shall be sentenced by such Court to suffer imprisonment with or without hard labor for any period not exceeding three years.

Punishable with imprisonment not exceeding three years.

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*Regimental, Detachment, or Line Courts Martial.*

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ARTICLE 155.

It shall be competent to any Officer having authority to convene a Regimental, Detachment, or Line Court Martial, to cause offenders, not being Commissioned Officers, accused of any of the offences specified in these Articles of War, for which no punishment exceeding imprisonment with hard labor for three years is therein provided, to be tried before Regimental, Detachment, or Line Courts Martial, and any such Court shall have power, on conviction, to sentence any such offender to suffer imprisonment with or without hard labor for any period not exceeding six calendar months.

Offences punishable by imprisonment not exceeding six months.

ARTICLE 156.



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ARTICLE 156.

Any Officer or Soldier, who shall be convicted ;—

Stealing property not exceeding 50 Rupees in value.

Of stealing property not exceeding fifty Rupees in value ;——or

ARTICLE 157.

Simple assault or affray.

Of assault or affray, unattended with homicide, severe wounding, or aggravating circumstances—

Punishable with imprisonment not exceeding one year if awarded by General, District, or Garrison Court Martial.

or not exceeding six months if awarded by a Regimental, Detachment, or Line Court Martial

May be sentenced to suffer imprisonment with or without hard labor for any period not exceeding one year, by the award of a General, or District, or Garrison Court Martial; or for any period not exceeding six calendar months, by the award of a Regimental, or Detachment, or Line Court Martial.

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*Offences punishable by imprisonment from six months to two years according to the description of the Court.*

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ARTICLE 158.

Any Officer or Soldier, who shall be convicted—

Resisting process of a Magistrate or Police Officer.

Of resisting the process of a Magistrate or Police Officer ;——or

ARTICLE 159.

Of having committed any offence against person or property for which

Committing any offence not already provided for.

provision is not already made in the preceding Articles of War;

May



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Punishable with imprisonment not exceeding two years if awarded by General Court Martial.

not exceeding one year if by District or Garrison Court Martial,

and not exceeding six months if by a Regimental, Detachment, or Line Court Martial

May be sentenced to suffer imprisonment for any period not exceeding two years by the award of a General Court Martial, for any period not exceeding one year by the award of a District or Garrison Court Martial, and for any period not exceeding six calendar months by the award of a Regimental, or Detachment, or Line Court Martial.

ARTICLE 160.

Any Officer or Soldier, who shall be convicted by a General, or District, or Garrison, or Regimental Court Martial, of having been present, aiding and abetting, or of having caused, instigated, or procured, the commission of any of the offences specified in any of these Articles, shall be sentenced by such Court to any punishment in these Articles provided for such offence, and within the competency of such Court to award.

ARTICLE 161.

No sentence of death shall be carried into effect until confirmed by the Commander-in-Chief of the Presidency to which the person on whom such sentence is passed belongs; or if such person is attached to the force of any Presidency, but is serving with a force in any place out of British India, until it be confirmed by the Officer Commanding such force; or if such person belongs to a force in any part of India not under the Commander-in-Chief of any Presidency, until confirmed by the Officer Commanding such force.

ARTICLE 162.

The Commander-in-Chief or other Commanding Officer as provided in the last Article is authorized at his discretion to confirm any sentence of death, and to remit such sentence, or to commute it to transportation for life, or for a period not less than seven years

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or to imprisonment with hard labor for any period not exceeding fourteen years.

ARTICLE 163.

Transportation. No sentence of transportation shall be carried into effect until confirmed by the Commander-in-Chief, or other Commanding Officer as provided in Article 161, and the Commander-in-Chief or such other Commanding Officer, is authorized at his discretion to remit such sentence or to confirm it, or to commute it to imprisonment with or without hard labor for any period not exceeding fourteen years. Provided that, if the sentence of transportation be for any period less than fourteen years, the imprisonment in commutation shall not be for any longer period.

ARTICLE 164.

Remission or mitigation. It shall be competent to any Officer having authority, to confirm the sentence of a General or other Court Martial, and to remit any sentence passed by such Court Martial, or to mitigate such sentence by substituting simple imprisonment for imprisonment with hard labor, or by reducing the period of imprisonment, or by directing the discharge of the offender in lieu of any imprisonment.

ARTICLE 165.

No person to be tried a second time for the same offence. Any person who shall have been tried by a Court Martial for any offence under the authority of these Articles of War, shall not be tried for the same offence in any other Court whatsoever except as provided in Article 119; and no person who shall have been acquitted or convicted of any offence by any Court of Judicature, shall be punished for the same offence by a Court Martial. But such person may be discharged from the service.

ARTICLE 166.

Regulations respecting Bazaars and Cantonment Police, and Panchayets, declared in force. The Regulations by which in any Presidency, the office and powers of Commissariat Officers, or Officers in charge of the Police in any Cantonments, or Superintendents of Military Bazaars, are at present defined and controlled; or by

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by which punchayets are constituted and guided ; or by which jurisdiction is given to Courts Martial over offences committed by persons amenable to the Articles of War, within certain limits beyond or around Cantonments ; shall continue to be in full force, and to be observed at the several Presidencies respectively.

CHAPTER VII.

*Application of the Articles.*

ARTICLE 167.

All Officers and Soldiers, Drivers, Farriers, Trumpeters, Drummers, unattested Recruits, Sub-Assistant Surgeons, Native <sup>Persons amenable to the Articles.</sup> Doctors, Hospital Attendants, Dressers, Artificers, and Laborers, Sutlers, Followers, public and private, or others attached to or serving with any part of the Army, are to be governed by these Articles, and to be subject to trial and punishment by Courts Martial.

Provided that all Drivers, Farriers, Trumpeters, Drummers, Recruits, Sub-Assistant Surgeons, Native Doctors, Hospital Attendants, and Dressers, hereafter enlisted, shall be attested according to the Regulations of the Presidency to which they belong.

Persons of European descent (whether on the side of their father or mother) professing the Christian religion, if belonging to the descriptions mentioned in this Article (and not being Her Majesty's natural-born subjects born in Europe, or the children of such subjects,) shall be tried for Military offences by Courts Martial composed of European Officers only, and punished according to these Articles of War. For Criminal or Non-Military offences such persons shall not be amenable to these Articles of War, but shall be tried and punished in the same manner as persons who are subject to the Mutiny Act and Articles of War in force for the better government of the European Officers and Soldiers of Her Majesty's Indian forces.

ARTICLE 168.

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ARTICLE 168.

These Articles are to be translated into the several languages of the different Presidencies; and the following Articles, namely, the 2nd, 3rd, and 4th, the 5th to the 69th, both included; the 78th, 81st, 82nd, 110th, and 118th, are to be read once every three months at the head of every Regiment or Corps, Troop or Company in the service, and to every recruit at the period of his attestation.

ARTICLE 169.

These Articles of War shall take effect on and from the 1st day of November 1861.

Commencement of Act.

# ARTICLES OF WAR FOR NATIVE ARMY.

ACT No. V. OF 1863.

*[Received the assent of the G. G. on the 29th January, 1863.]*

Recites expediency of amending Act XXIX., 1861.

1. Repeals Sections 1 to 17, and Section 27 of Bombay, Reg. XXII., except Sections 3 and 7, as to small suits before bazaar superintendents, and Chapter 6 of same Reg., and Bombay Reg., 1829.

2. Repeals Articles 2, 32, 73, 78, 82, 117, 166 of Act XXIX., 1861, and substitutes new ones. Article 3 regulates dismissal and discharge; Article 32 respecting offences against religion; Article 73 respecting powers of Commander-in-Chief to appoint Courts Martial; Article 78 respecting death, transportation and imprisonment, dismissal, suspension or reduction to ranks; corporal punishment, imprisonment, or solitary confinement; punishment for disgraceful conduct; Article 82 as to powers of officers commanding detachment in punishing offences; Article 117 as to effect of trial once; Article 166 as to Regulations respecting Bazaar and Cantonment Police, and Panchayet.

3. Adds a paragraph to Article 103 of Act XXIX., 1861.

4. Act to be read as part of Act XXIX., 1863.



An Act to amend Act XXIX. of 1861 (*to consolidate and amend the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army*).

Whereas it is expedient to amend certain Articles of War enacted in the said Act XXIX. of 1861, it is enacted as follows :

I. Sections I. to XVII., and Section XXVIII. of Regulation XXII. of the Bombay Code (*to declare and*

*define Military Authority in its relations to the Civil Power and to the Community at large*) except Sections III. and VII., in so far as they regulate the jurisdiction, in small suits, of the Superintendents of Bazaars; Chapter VI. of the same Regulation; and Regulation II. of 1829, of the Bombay Code (*for establishing Rules and Articles for the better government of the Native Officers and Sepoys in the service of the United Company of Merchants of England trading to the East Indies under the Presidency of Bombay*), are hereby repealed.

II. The Articles of War, numbered respectively 3, 32, 73, 78, 82, 117, and 166 in the said Act XXIX. of 1861, are hereby repealed, and in lieu thereof the following Articles of War shall be read and taken as Articles 3, 32, 73, 78, 82, 117, and 166 respectively, of the said Act XXIX. of 1861.

Repeal of Articles 3,  
32, 73, 78, 82, 117 and  
166

#### ARTICLE 3.

A Non-Commissioned Officer or Soldier shall be liable to dismissal or discharge by order of the Governor General of India in Council, or of the Governor in Council, or the Commander-in-Chief of the Presidency to which he belongs; and the said Commander-in-Chief shall have power to reduce any Non-Commissioned Officer to the ranks.

The Commanding Officer of a Regiment or Corps shall have power to dismiss or discharge any Soldier below the rank of a Non-Commissioned Officer, and to dismiss, discharge, or reduce to the ranks any Non-Commissioned Officer belonging to such Regiment or Corps.

Discharge and reduction by Commanding Officer.

Every such dismissal or discharge shall involve forfeiture of claim to pension.



No Non-Commissioned Officer shall be reduced to the ranks for any stated period, nor suspended from his rank, nor reduced from a higher to a lower grade of Non-Commissioned Officer.

Proviso as to reduction and suspension.

Every Non-Commissioned Officer or Soldier discharged the service shall be furnished by the Commanding Certificate of discharge. Officer of the Regiment or Corps to which he belonged with a discharge Certificate in the Vernacular language of such Non-Commissioned Officer or Soldier. Such certificate shall express the authority for, and cause of, the discharge, and the period of the entire service in the Army of such Non-Commissioned Officer or Soldier, and shall be accompanied with an English translation.

#### ARTICLE 32.

Who shall wantonly and intentionally defile any place dedicated to religious worship, or shall wantonly and intentionally insult the religious feelings of any person.

Defiling place of religious worship.

#### ARTICLE 73.

The Commander-in-Chief of the Presidency may appoint a General or other Court Martial, and may confirm, mitigate, or commute or remit the sentence of such Court. He may issue his Warrant to any General or other Officer under his command, having the command of any body of Troops in the service of Her Majesty, empowering such Officer to appoint District or Garrison Courts Martial, as occasion may require, for the trial of any offence committed by any Officer or Soldier, or Follower in the Service of Her Majesty, not being a European British-subject of Her Majesty; and to confirm and mitigate, or commute or remit the sentence of any such Court Martial. No sentence, adjudging or involving forfeiture of additional pay or of claim to pension on discharge, or of any prospective advantage, shall be carried into effect until sanctioned by the Commander-in-Chief of the Presidency to which the offender belongs. The Commander-in-Chief may remit any forfeiture awarded, and may order the restoration of any advantage of which the offender has been deprived by such forfeiture.

Powers of the Commander-in-Chief to appoint Courts Martial.

## ARTICLE 78.

A General Court Martial may sentence for any crime, which by these Articles is made liable to such <sup>Death, transportation, or imprisonment.</sup> sentence, any Officer to death or to transportation for life, or for any period not less than seven years, or in cases falling under Article 22 or Article 66, to imprisonment with or without hard labor for any period not exceeding three years, with or without solitary confinement; or may sentence any Soldier to death, or to transportation for life, or for any period not less than seven years, or to imprisonment for any period not exceeding fourteen years, for any crimes which are by these Articles of War expressly made liable to any such sentence and for such crimes only. No Court Martial inferior to a General Court Martial shall have power to pass a sentence of death, or transportation or imprisonment for any longer period than three years.

*Punishment of Commissioned Officers.*

A General Court Martial may sentence a Commissioned Officer <sup>Dismissal, suspension, or reduction to rank.</sup> to be dismissed the service; or to be suspended from rank and pay and allowances for a stated period; or to be placed one or more steps lower in the list of his rank, by an alteration of the date of the Commission, and such Officer shall lose the corresponding benefit of length of service.

No Court Martial inferior to a General Court Martial shall have power to try a Commissioned Officer.

*Punishment of Non-Commissioned Officers and Soldiers.*

A General, or District, or Garrison, or Regimental Court Martial may sentence a Non-Commissioned <sup>Reduction to rank, corporal punishment, imprisonment, or solitary confinement.</sup> Officer to be reduced to the ranks; or may sentence a Non-Commissioned Officer or Soldier to be dismissed the service; or to be placed one or more steps lower in the list of the rank which he holds, whereby such Non-Commissioned Officer or Soldier shall lose the benefit of the corresponding length of service; or to suffer corporal punishment not exceeding fifty lashes; or to imprisonment which may be with or without hard labor, and which may include solitary confinement for any portion or portions of such imprisonment, not exceeding fourteen days at a time, nor eighty-four days

in any one year, with intervals between the periods of solitary confinement of not less duration than such periods of solitary confinement.

No Soldier shall be kept in solitary confinement more than eighty-four days in any one year, whether by the sentence of one or more Courts Martial, or by order of the Commanding Officer of the Regiment or Corps to which such Soldier belongs.

No sentence of imprisonment shall be awardable by a General Court Martial for any period exceeding two years (except when otherwise expressly provided); nor by a District or Garrison Court Martial for any period exceeding one year; nor by a Regimental Court Martial for any period exceeding six calendar months.

No Non-Commissioned Officer shall be sentenced to imprisonment or corporal punishment without being first reduced to the ranks.

*Punishment for "Disgraceful Conduct."*

A General, or District, or Garrison Court Martial may, in addition to corporal punishment or to imprisonment, sentence a Soldier convicted of disgraceful conduct to forfeiture of all advantage as to additional pay and claim to pension on discharge, which otherwise might have accrued from the length or nature of his former service; or to forfeiture of such advantage absolutely, whether it may have accrued from past service, or might accrue from future service.

No Soldier shall be tried for disgraceful conduct by any Court Martial inferior to a District or Garrison Court Martial.

A Court Martial may, in addition to any punishment involving dismissal or discharge, sentence any Officer or Soldier, whom it is authorized to try, to forfeiture of arrears of pay and allowances due at the time of dismissal or discharge, or of such portion thereof as may be required to make good any loss or damage arising out of his misconduct. A Court Martial, in addition to any punishment not involving dismissal or discharge, may sentence any Officer or Soldier to be put under stoppages not exceeding, in the case of an Officer two-thirds of his pay and allowances, and in the case of a Non-Commissioned Officer or

Forfeiture of pay or pension in addition to corporal punishment or imprisonment.

Forfeiture and stoppages in addition to dismissal

Soldier one-half of his pay and allowances until any loss or damage arising out of his misconduct be made good.

Every Soldier subjected to confinement in the Quarter Guard  
Forfeiture of pay during confinement. or Defaulter's Room, or in a Solitary Cell, or in any other place of imprisonment, whether as a punishment by his Commanding Officer or on a charge of which he shall be afterwards convicted by Court Martial, shall forfeit all claim to pay and allowances during such confinement, and shall be entitled to receive subsistence only according to the rates laid down in the Regulations.

#### ARTICLE 82.

An Officer Commanding a Detachment of his own Regiment or Corps may assemble a Regimental Detachment Court Martial; and an Officer Powers of Officers Commanding Detachments in punishing offences. Commanding a Detachment consisting of men of different Regiments or Corps, may assemble a Detachment or Line Court Martial. Every Court so assembled shall be constituted in the manner provided for a Regimental Court Martial under the provisions of these Articles of War, and shall have the like powers.

The provisions of these Articles of War which relate to a Court Martial held in a Regiment or Corps shall, in all practicable cases, be taken to apply to a Court Martial held in a Detachment.

No Officer on detached command of less than three Troops or Companies, or of a Detachment not numerically equal to three Troops or Companies, and not being on the line of march or on board a ship or other vessel, shall carry into effect any punishment awarded by a Court Martial held by his order, until the sentence shall have been confirmed by the Officer Commanding the Regiment or Corps to which the offender belongs, or by the nearest Superior Officer holding a command of not less than a Regiment, who is hereby authorized to confirm every such sentence in like manner as an Officer Commanding a Regiment or Corps might do. Provided that in detached situations beyond the Sea, or out of the British Territories in India, or when on service in the field, or in cases where an immediate example is necessary, and reference cannot be made

to such Commanding or Superior Officer without detriment to the service, the Officer Commanding such Detachment may exercise the powers relating to Courts Martial which are vested in an Officer Commanding a Regiment or Corps.

*Clause 2.*

The Commanding Officer of any Detachment of not less than three Troops or Companies, or of any Detachment numerically equal to or greater than three Troops or Companies; and the Commanding Officer of any European Detachment to which native details are attached (of whatever strength or number such European Detachments, or such native details may be); and any Commissary of Ordnance, being a Commissioned Officer, or other Commissioned Officer in Charge of any Arsenal, Ordnance Establishment, or any Camp Equipage Depôt, may summarily try any offence against these Articles of War, committed by any person under his command or who is subject to such Articles (not being a Commissioned Officer; and may on conviction sentence such offender and carry out such sentence without confirmation or any further authority; provided that such sentence shall not exceed the powers of a Regimental Court Martial.

In detached situations beyond the Sea, or out of the British Territories in India, or when on service in the field, or in cases where an immediate example is necessary, and a Court Martial cannot be convened under Clause 1 of this Article without detriment to the service, and reference cannot be made without such detriment to the Officer Commanding the Regiment or Corps to which the offender belongs, or to any other Superior Officer holding a command not less than that of a Regiment, the Officer Commanding any Detachment though of less than three Troops or Companies, or not numerically equal to three Troops or Companies, may exercise the powers of summary trial, of sentencing the offender, and of carrying out such sentence, which might have been exercised by the Officer Commanding the Regiment or Corps to which the offender belongs. Provided that, if reference can be made to any other Superior Officer holding a Command not less than that of a Regiment, such reference shall be made, and such Officer thereupon shall have authority summarily to try, and, in case of conviction, to sentence

the offender, and to carry out such sentence as if the offender had been under his command.

Any Commanding Officer or other Officer holding a trial under this Article shall be deemed a Court Martial, and the words "Court Martial" in these Articles of War, shall be deemed to include such Commanding Officer or other Officer holding a trial.

The proceedings of such summary trial shall be conducted, so far as may be practicable, and shall be recorded in the same manner as is provided in Article 81 for summary trials by an Officer Commanding a Regiment or Corps, and shall, in like manner, be signed and forwarded to the Officer Commanding the Division within which such Detachment shall be at the time, who is hereby authorized to set aside the trial for the same reasons that an Officer Commanding a Division is authorized by Article 81 to set aside a trial by an Officer Commanding a Regiment or Corps. Provided that every sentence so awarded by an Officer Commanding any such Detachment, or by any other Officer holding a trial under this Article, may be carried out without waiting for its approval by the Reviewing Officer.

#### ARTICLE 117.

No person who shall have been acquitted or convicted by a Court Martial of any offence, shall be liable to be tried a second time by the same or any other Court Martial for the same offence.

No person to be tried a second time for the same offence.

Provided that any person may be tried for the offence of murder, and punished for that offence, notwithstanding he may have been tried and punished for the act which caused death, if at the time of his conviction for the said Act death shall not have resulted, or shall not have been known by the Court which passed sentence to have resulted.

When any person subject to these Articles of War shall have been found guilty by a Court Martial of any Military offence, such Court Martial shall enquire into and receive evidence of any previous conviction of such person before a Court Martial or a Court of Justice, and shall enquire into the general character of such person, if a Soldier, for the purpose of apportioning the punishment to which he is liable to be sentenced for the offence



of which he has been so found guilty. And it shall be necessary to give any notice to such person, previously to his trial, that such evidence will be received.

#### ARTICLE 166.

The Regulations by which in any Presidency the office and powers of Commissariat Officers, or Officers in charge of the Police in any Cantonments, or Superintendents of Military Bazaars, are at present defined and controlled, or by which Panchayets are constituted and guided, shall continue to be in full force, and to be observed at the several Presidencies respectively.

III. The following additional Clause shall be read as the second paragraph of Article 103, of the said Act XXIX. of 1861.

Every witness during attendance on a Court Martial, and during the time necessary for going and returning shall be privileged from arrest in any Civil proceeding, and if arrested in any such proceeding, may be discharged by order of such Court Martial.

IV. This Act shall be read and taken as part of the said Construction. Act XXIX. of 1861.

By Act XXVI., 1865, Article 83 of Act XXIX., 1861, was repealed, and a new Article substituted.

# ARTICLES OF WAR FOR NATIVE ARMY.

ACT No. XXVI. OF 1865.

*[Received the assent of the G. G. on the 3rd August, 1865.]*

Recites expediency of amending Act 29, 1861, Art. 83.

1. Repeals the said Article. Substitutes new Article for it respecting Minor Punishments.

2. Act to be read as part of Act 29, 1861.

Whereas it is expedient to amend the 83rd Article of War enacted in the said Act XXIX. of 1861,  
Preamble it is enacted as follows:

I. The Article of War numbered 83 in the said Act XXIX. of 1861, is hereby repealed, and in lieu thereof, the following Article of War shall be read and taken as Article 83 of the said Act XXIX. of 1861 :—  
Repeal of Article 83.

ARTICLE 83.

The Commander-in-Chief in India shall, under the authority of the Governor General in Council, prescribe <sup>Punishment for light offences.</sup> the minor punishments to which Non-Commissioned Officers and Soldiers shall, for light offences, be liable, without the intervention of a Court Martial; and shall specify the Officer or Officers by whom such minor punishment and the extent thereof may be awarded. But no such minor punishment shall be awarded by a Court Martial.

Construction.

II. This Act shall be read and taken as part of the said Act XXIX. of 1861.

# THE INDIAN ARTICLES OF WAR.

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## ACT No. V OF 1869.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 26th February 1869*).

*An Act to consolidate and amend the Articles of War for the government of Her Majesty's Native Indian Forces.*

### Preamble.

WHEREAS it is expedient to consolidate and amend the Articles of War for the government of the Native Officers, Soldiers and other persons in Her Majesty's Indian Army; It is hereby enacted as follows :—

### PART I.—PRELIMINARY.

#### (a).—*Short Title.*

This Act may be called "The Indian Articles of War."

#### (b).—*Commencement of Act.*

This Act shall come into operation on the first day of June 1869.

#### (c).—*Repeal of Enactments.*

From such day the first section of Act No. XXV of 1857 (*to render Officers and Soldiers in the Native Army liable to forfeiture of property for Mutiny, and to provide for the adjudication and recovery of forfeitures of property in certain cases*), Act No. XXIX of 1861 (*to consolidate and amend the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army*), Act No. V of 1863 (*to amend Act XXIX of 1861*), and Act No. XXVI of 1865 (*to amend Act XXIX of 1861*) shall be repealed:

Provided that all crimes and offences committed against any Articles of War repealed by this Act may be enquired into and punished in like manner as if they had been committed against the Articles of War contained in this Act, and that any warrant for holding Courts Martial, issued under any Act hereby repealed, shall remain in full force, notwithstanding such repeal:

Provided



Provided also, that no proceedings in any trial begun under any Articles so repealed, shall be discontinued owing to such repeal, but every such trial shall proceed and be completed in the same manner as if this Act had not been passed.

References to any Act hereby repealed, or any Act passed subsequently thereto, shall be read as if made to this Act.

(d).—*Application of Articles.*

The Articles contained in Part II of this Act shall apply to all

Commissioned Officers,  
 Sub-Assistant Surgeons,  
 Hospital Assistants,  
 Native Doctors,  
 Warrant Officers,  
 Non-Commissioned Officers,  
 Hospital Attendants of any class,  
 Trumpeters, Buglers, Drummers,  
 Musicians,  
 Soldiers,  
 Unattested Recruits,  
 Lascars, Mahouts, Drivers,  
 Farriers, Syces, Grass-cutters,  
 Artificers, Labourers,  
 Sutlers, Followers, whether public or private, and all other persons  
 attached to or serving with any portion of the said Army :

*Proviso.*

Provided that nothing in the said Part (other than Article 123) shall render any British-born subject of Her Majesty, or any legitimate Christian lineal descendant of such subject, whether in the paternal or maternal line, triable or punishable under the said Part, but all such persons belonging to Her Majesty's Indian Army shall be triable and punishable as if they belonged to Her Majesty's British Forces.

And that nothing in the said Part shall render any American or any Christian European not being British-born, or any Christian legitimate lineal descendant of such American or European, whether in the paternal or maternal line,  
 triable



triable by a Court Martial composed of Native Commissioned Officers; but all such persons belonging to Her Majesty's Indian Army shall be triable by Courts Martial composed of European Officers only. Save as aforesaid, such persons shall be subject to this Act as if they were Natives of British India.

(e).—*Interpretation-clause.*

In this Act, unless there be something repugnant in the subject or context—

“Army” means Her Majesty's Indian Army, and “service” means service in such Army :

“Commissioned Officer” includes all Officers holding Commissions in the Native ranks of the Army, whether they be of purely Native or of a mixed European and Native extraction :

“European Officers” includes all European Officers holding Commissions in such Army or in Her Majesty's British Army :

“Commanding Officer” or “Officer Commanding” means the European Officer in actual command for the time being of any Force, Division, District, Regiment, Corps, Detachment, or Depôt, as the case may be :

“Judge Advocate” includes any European Officer duly authorized to officiate as Judge Advocate :

“Court Martial” means a Court Martial held under this Act, and in Articles 67, 68, 69 and 123 shall include a Court Martial held under the Act for punishing mutiny and desertion, and for the better payment of the Army and their quarters for the time being in force :

“Soldier” and “Soldiers” include Non-Commissioned Officers and all armed persons doing duty in the ranks of the Army :

“Attested ” means attested under the Articles contained in Part II of this Act :

“Deserter” means a person subject to such Articles, who has deserted from the Army :

“Government” means, in the case of the Madras Army, the Governor of Fort Saint George in Council, in the case of the Bombay Army, the Governor of  
of

of Bombay in Council, and in the case of any other part of Her Majesty's Indian Army, the Governor General of India in Council;

And the expressions "assault," "criminal force," "dishonestly," "extortion," "fraudulently," "grievous hurt," "hurt," "theft," "voluntarily causes hurt," "voluntarily causes grievous hurt," "reason to believe," "wrongful gain" and "wrongful loss" shall be severally taken to have the meanings assigned to them respectively in the Indian Penal Code, and quoted in Part I of the appendix to this Act.

(f).—*Saving of certain Regulations.*

Nothing in this Act affects any regulations by which the respective offices and powers of Cantonment Magistrates, Commissariat Officers, Officers in charge of the Police in Cantonments, and Superintendents of Military Bazzars are defined and controlled, or by which Panchayats are constituted and guided

## PART II.—THE ARTICLES OF WAR.

### TITLE I.—ENLISTMENT, DISMISSAL AND DISCHARGE.

#### CHAPTER I.—*Enlistment.*

##### *Articles to be read to Recruits.*

*Article 1.*—Every person prior to being enrolled in any Regiment or Corps shall have the 7th, 8th, 9th, 10th, 11th, 24th, 38th and 53rd of these Articles read and explained to him.

##### *Affirmation.*

When reported fit for duty, such declaration or charge as may be usual shall be made to him, by the Officer Commanding, in front of the Regiment or Corps, or of such portion thereof as shall be present; and the person shall then make the following affirmation :—

"I , inhabitant of , son of , solemnly  
"affirm in the presence of Almighty God that I will be faithful to Her  
"Majesty the Queen, Her heirs and successors, and will go wherever I am  
"ordered, by land or sea, and will obey all commands of the Officers set over  
"me, even to the peril of my life.

*Attestation*



*Attestation.*

*Article 2.*—All persons of the following classes, hereafter enlisted or enrolled under these Articles, shall be attested according to the regulations of the government to which they are respectively subject :—Sub-Assistant Surgeons, Hospital Assistants, Native Doctors, Warrant Officers of any Department, Trumpeters, Buglers, Drummers, Musicians, Soldiers, Lascars, Mahouts, Drivers, Farriers, Syces and Grass-cutters.

Articles 3, 4, 5, 7 to 71 (both inclusive), 90 to 94 (both inclusive), 130 to 139 (both inclusive), 154, 167 and 176 shall be read to every person enlisted or enrolled under these Articles at the time of his attestation.

*CHAPTER II.—Dismissal and Discharge.**Dismissal of Commissioned Officers.*

*Article 3.*—A Commissioned Officer shall be liable to dismissal from the service by the sentence of a General Court Martial, or by order of the Governor General of India in Council, or of the Commander-in-Chief of the Presidency to which he belongs, or, if the Officer belongs to either of the Presidencies of Fort St. George or Bombay, of the Governor in Council of such Presidency.

Every Commissioned Officer dismissed under these Articles shall forfeit all claim to pension.

*Dismissal of other Persons.*

*Article 4.*—Any person subject to these Articles, other than a Commissioned Officer, shall be liable to dismissal from the service

by the sentence of any Court Martial empowered to try him,

or by order of the Governor General of India in Council, or of the Commander-in-Chief of the Presidency to which he belongs,

or, if he belongs to either of the Presidencies of Fort St. George and Bombay, by order of the Governor in Council,

or, if he belongs to a Force not attached to any such Presidency, by order of the Officer Commanding such Force.

Every such person so dismissed shall forfeit all claim to pension.

*Attested*

*Attested person dismissed and re-enlisting.*

*Article 5.*—Every attested person of or below the rank of Non-Commissioned Officer who has been dismissed or discharged from the service, and who subsequently re-enters the service without at the time stating the fact of his dismissal or discharge, or showing his certificate of dismissal or discharge, may be dismissed the service by the Officer Commanding the regiment or corps with which he is serving.

*Certificate to person dismissed.*

*Article 6.*—Every attested person who is dismissed or discharged from the service, shall be furnished by his Commanding Officer with a certificate, in the English language and in the mother-tongue of such person (when his mother-tongue is not English), setting forth

- (a) the authority dismissing or discharging him,
- (b) the cause of his dismissal or discharge, and
- (c) the full period of his service in the Army.

TITLE II.—MILITARY OFFENCES.

CHAPTER I.—*Crimes punishable with Death or Transportation.*

*Mutiny and Sedition.*

*Article 7.*—Any person subject to these Articles—

Who begins, excites, causes or joins in any mutiny or sedition in any regiment, corps, detachment, or guard ;

or who, being present at any mutiny or sedition, does not use his utmost endeavours to suppress the same,

or who, knowing or having reason to believe in the existence of any mutiny, or of any intention to mutiny, or of any conspiracy against the State,

does not, without delay, give information thereof to his Commanding or other superior Officer ;—or

*Violence to superior.*

*Article 8.*—Who uses or attempts to use criminal force to, or commits an assault on, his superior Officer, whether on or off duty, under any circumstances in which the superior Officer is distinguishable as such in any manner ;—or

*Disobedience.*



*Disobedience.*

*Article 9.*—Who disobeys the lawful command of his superior Officer ;—or

*Desertion.*

*Article 10.*—Who deserts the service ;—or

*Re-enlistment without having been discharged.*

*Article 11.*—Who, without having first obtained a regular discharge from the regiment or corps to which he belongs, enlists, or enrolls himself in any other regiment or corps ;—or

*Sentry sleeping on or quitting post in time of war.*

*Article 12.*—Who, being a sentry in time of war or alarm, or over any State-prisoner, treasure, magazine, or dockyard, sleeps upon his post, or quits it without being regularly relieved, or without leave ;—or

*Sentry plundering.*

*Article 13.*—Who, being a sentry, or on guard, plunders or wilfully destroys or injures any property placed under his charge, or under charge of his guard ;—or

*Abandoning garrison.*

*Article 14.*—Who shamefully abandons or delivers up any garrison, fortress, post or guard committed to his charge, or which it is his duty to defend ;—or

*Betraying watch-word.*

*Article 15.*—Who treacherously makes known the watch-word to any person not entitled to receive it according to the rules and discipline of war ;—or

*Corresponding with enemy.*

*Article 16.*—Who directly or indirectly holds correspondence with, or communicates intelligence to the enemy, or any person in arms against the State, or who, coming to the knowledge of any such correspondence or communication, omits to discover it immediately to his commanding or other superior Officer ;—or

*Assisting enemy.*

*Article 17.*—Who directly or indirectly assists or relieves, with money, victuals or ammunition, or knowingly harbours or protects any enemy, or person in arms against the State ;—or

*Releasing*

*Releasing prisoners.*

*Article 18.*—Who, without proper authority, releases any State-prisoner, enemy, or person taken in arms against the State, placed under his charge, or who negligently suffers any such prisoner, enemy or person to escape;—or

*Misbehaviour in presence of enemy.*

*Article 19.*—Who, in presence of an enemy, or of any persons in arms against whom it is his duty to act, shamefully casts away his arms or ammunition, or intentionally uses words or any other means to induce any Officer or Soldier to abstain from acting against the enemy or to discourage such Officer or Soldier from acting against the enemy, or who otherwise misbehaves;—or

*Seeking plunder during action.*

*Article 20.*—Who, in time of action, without authority, leaves his Commanding Officer, or his post, or colours, or party to go in search of plunder;—or

*Quitting guard in time of war.*

*Article 21.*—Who, in time of war, quits his guard, picquet, party or patrol, without being regularly relieved or without leave;—or

*Assaulting persons bringing provisions.*

*Article 22.*—Who, in time of war, or during any military operation, uses criminal force to, or commits an assault on, any person bringing provisions or other necessities to the camp or quarters of any of Her Majesty's forces,

or forces a safeguard, or, without authority, breaks into any house or other place for plunder; or plunders, injures or destroys any field, garden or other property of any kind;—or

*Causing false alarm in time of war.*

*Article 23.*—Who in time of war, or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports by words or by letters calculated to create alarm or despondency,

*Punishment for the foregoing offences.*

*Article 24.*—Shall, on conviction, suffer death, or transportation for life or for a term of not less than seven years,

or



or imprisonment (with or without hard labour, and with or without solitary confinement) for a term which may extend to fourteen years,

or such other punishment as a General Court Martial is, by these Articles, empowered to award.

Whenever any person is convicted under this section of an offence punishable with death, all his property, moveable and immoveable, shall be forfeited to Government.

CHAPTER II.—*Crimes punishable otherwise than by Death or Transportation.*

*Unbecoming behaviour.*

*Article 25.*—Any Officer, Sub-Assistant Surgeon, Hospital Assistant, Native Doctor, or Warrant Officer,

who behaves in a manner unbecoming his position and character ;—and

*Intoxication on duty.*

*Article 26.*—Any person subject to these Articles,

who is in a state of intoxication when on or for any duty, or on parade, or on the line of march ;—or

*Striking sentry.*

*Article 27.*—Who strikes, or forces or attempts to force any sentry ;—or

*Harbouring deserter.*

*Article 28.*—Who knowingly harbours any deserter ; or who, knowing, or having reason to believe, that any other person has deserted, or that any deserter has been harboured by any other person, does not immediately give notice to his own or some other superior Officer, or use his utmost endeavours to cause such deserter to be apprehended ;—or

*Enlisting deserter.*

*Article 29.*—Who knowing, or having reason to believe, that a person is a deserter enlists him ;—or

*Absence without leave.*

*Article 30.*—Who absents himself without leave, or, without sufficient cause, overstays leave granted to him ;—or

*Failure*

*Failure to rejoin.*

*Article 31.*—Who, being on leave of absence and having received information from proper authority that his regiment or corps has been ordered on service, fails, without sufficient cause, to rejoin without delay ;—or

*Failure to attend parade.*

*Article 32.*—Who, without sufficient cause, fails to appear at the time fixed at the parade or place appointed for exercise or duty ;—or

*Quitting parade or division.*

*Article 33.*—Who, when on parade, or on the line of march, without sufficient cause, or without leave from his superior Officer, quits the parade or line of march ;—or

*Quitting guard in time of peace.*

*Article 34.*—Who, in time of peace, quits his guard, picquet, or patrol, without being regularly relieved, or without leave ;—or

*Refusing to receive or releasing prisoners.*

*Article 35.*—Who, being in command of a guard, picquet, or patrol, refuses to receive any prisoner duly committed to his charge, or without proper authority releases any prisoner, or negligently suffers any prisoner to escape ;—or

*Leaving arrest.*

*Article 36.*—Who, being under arrest, or in confinement, leaves his arrest or confinement before he is set at liberty by proper authority ;—or

*Insubordination.*

*Article 37.*—Who is grossly insubordinate or insolent to his superior Officer in the execution of his office ;—or

*Refusal to superintend military work.*

*Article 38.*—Who refuses to superintend or assist in the making of any field-work, or other military work of any description, ordered to be made either in quarters or in the field ;—or

*Impeding*

y

*Impeding Provost Marshal.*

*Article 39.*—Who impedes a Provost Marshal or an Assistant Provost Marshal, or any person lawfully exercising authority, or refuses when called upon to assist such person when requiring aid in the execution of his duty ;—or

*Striking subordinates.*

*Article 40.*—Who strikes or otherwise ill-treats any soldier or other person attested under these Articles being his subordinate in rank or position ;—or

*Extortion.*

*Article 41.*—Who commits extortion ; or, without proper authority, exacts from any person carriage, portorage, or provisions ;—or

*House-breaking or plundering in time of peace.*

*Article 42.*—Who, in time of peace, commits house-breaking for the purpose of plundering ; or plunders, destroys, or damages any field, garden, or other property ;—or

*Neglecting to compensate person injured by subordinate.*

*Article 43.*—Who, being in command at any post, or on the march, and receiving a complaint that any one under his command has beaten, or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person, or to report the case to the proper authority ;—or

*Defiling places of worship.*

*Article 44.*—Who, by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person ;—or

*Taking bribes.*

*Article 45.*—Who, directly or indirectly, requires, accepts, or obtains, or agrees to accept, or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enlistment or enrolment of any person, or leave of absence, promotion, or any other advantage or indulgence for any person in the service ;—or

*Causing false alarm in time of peace.*

*Article 46.*—Who, in time of peace, by any means whatever, intentionally occasions a false alarm in camp, garrison, or cantonment ;—or

*Making*



*Making away with regimental necessaries.*

*Article 47.*—Who designedly or through neglect kills, injures or loses his horse, or who dishonestly or fraudulently removes, conceals or delivers to any person, or who designedly or through neglect injures or loses his arms, clothes, tools, musical or surgical instruments, equipments, ammunition, accoutrements, or regimental necessaries, or any such articles entrusted to him, or belonging to any other person,

or who sells, pawns, destroys or defaces any medal or decoration granted to him by order of Her Majesty, or of the East India Company, or of the Governor General of India in Council for service in the field, or for general good conduct ;—or

*Attempting suicide.*

*Article 48.*—Who attempts to commit suicide, and does any act towards the commission of such offence ;—and

*Appearing armed in camp.*

*Article 49.*—Any person subject to these Articles below the rank of War-rant Officer—

Who, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to, or returning from, any town or bázár, carrying a sword, bludgeon, or other offensive weapon ;—or

*Sentry sleeping on post in time of peace.*

*Article 50.*—Who, being a sentry, in time of peace, sleeps upon his post, or leaves it before being regularly relieved, or without leave ;—or

*Absence from camp.*

*Article 51.*—Who, without proper authority, is found two miles or upwards from camp ;—or

*Absence from cantonment after tattoo.*

*Article 52.*—Who, without proper authority, is absent from his cantonment or lines after tattoo, or from camp after retreat-beating;

*Punishment*

*Punishment for offences mentioned in Articles 25—52.*

*Article 53.*—Shall, on conviction by any Court Martial competent to try him, be sentenced to such punishment, other than death or transportation, as such Court is, by these Articles, empowered to award.

*CHAPTER III.—Crimes to be punished with dismissal from the service.**Embezzlement.*

*Article 54.*—Any person subject to these Articles—

Who dishonestly misappropriates or converts to his own use any money, provisions, forage, arms, clothing, ammunition, tools, instruments, equipments or military stores of any kind, the property of Government, entrusted to his charge on the public account, or for any military purpose,

or who dishonestly uses or disposes of such property in violation of any direction of a proper authority,

or who dishonestly receives or retains any such property, knowing or having reason to believe the same to have been dishonestly misappropriated or converted ;—or

*Destruction of Government property.*

*Article 55.*—Who wilfully destroys or injures any property of Government entrusted to him on the public account, or for any military purpose ;—or

*Giving false evidence.*

*Article 56.*—Who, having been duly sworn or affirmed before any Court Martial, or other Military Court competent to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true;—

*Punishment for offences mentioned in Articles 54, 55, 56.*

*Article 57.*—Shall, if convicted by a General Court Martial, be sentenced to be dismissed the service and to forfeit any arrears of pay and allowances due to him at the time of dismissal ; and shall be punishable also with imprisonment (with or without hard labour, and with or without solitary confinement) for a term which may extend to three years : and shall, if convicted by a District or Garrison Court Martial, be liable to any or all of the penalties which such Court may inflict for disgraceful conduct.

*CHAPTER IV.*



CHAPTER IV.—*Disgraceful Conduct.*

*Malingering.*

*Article 58.*—Any person subject to these Articles—

Who malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity ;—or

*Wilfully causing hurt.*

*Article 59.*—Who, with intent to render himself or any other person unfit for service, voluntarily causes hurt or voluntarily causes grievous hurt to himself or any other person ;—or

*Theft.*

*Article 60.*—Who commits theft in respect of any property of Government, or of any Officer or Soldier, or of any other person in the service, or of any military mess or band, or of any person serving with or attached to the Army, or who dishonestly receives or retains any such property, knowing or having reason to believe it to be stolen ;—or

*Embezzlement of Government property not entrusted on public account.*

*Article 61.*—Who dishonestly misappropriates or converts to his own use any property of Government entrusted to him for any purpose not provided for in Articles 54 and 55,

or who dishonestly receives or retains any such property knowing or having reason to believe it to have been dishonestly misappropriated or converted ;—or

*Obtaining pension by false statement.*

*Article 62.*—Who obtains or attempts to obtain for himself, or for any other person, any pension, allowance, or other advantage or privilege by a statement which is false, and which he knows or has reason to believe to be false, or does not know to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement ;—or

*Furnishing false returns.*

*Article 63.*—Who knowingly furnishes a false return or report of the number or state of any men under his command or charge, or of any money, arms, ammunition, clothing, equipments, stores or other property in his charge, whether  
belonging

belonging to such men, or to Government, or to any person in or attached to the Army, or who, through design or culpable neglect, omits or refuses to make or send any return or report of the matters aforesaid ;—or

*Other fraudulent offences.*

*Article 64.*—Who does any other thing with intent to defraud, or to cause wrongful gain to one person, or wrongful loss to another person ;—or

*Cruelty or Indecency.*

*Article 65.*—Who commits any other offence of a cruel, indecent, or unnatural kind, or attempts to commit any such offence and does any act towards its commission—

*Penalties for offences specified in Articles 58–65.*

*Article 66.*—May be tried for disgraceful conduct, and shall, on conviction by a General, District or Garrison Court Martial, be liable to any or all of the penalties awardable by such Court for disgraceful conduct.

CHAPTER V.—*Offences against Courts Martial.*

*Refusal to attend or be sworn.*

*Article 67.*—Any person subject to these Articles who, when duly summoned to attend as a witness before a Court Martial, intentionally omits to attend, or refuses to be sworn or make affirmation, or to answer any question, or to produce or deliver up any book or document which he may have been duly warned and called upon to produce or deliver up, or prevaricates, ;—or

*Contempts.*

*Article 68.*—Who intentionally offers any insult or causes any interruption or disturbance to, or uses any menacing or disrespectful word, sign or gesture, or is insubordinate or violent in the presence of a Court Martial while sitting;—

*Punishment for offences specified in Articles 67 and 68.*

*Article 69.*—Shall, on conviction by the same or by any other Court Martial which is competent to try the offender, be liable to such punishments as the convicting Court is, by these Articles, empowered to award.

CHAPTER VI.



CHAPTER VI.—*Unspecified Offences.*

*Article 70.*—All offences not punishable with death, all neglects to obey any garrison or other orders, and all acts and omissions, of which any person subject to these Articles is accused, shall, though not specified in these Articles, if they be prejudicial to good order and military discipline, be taken cognizance of and punished according to the nature and degree of the offence, act or omission by any Court Martial empowered to try the person guilty of such offence, act or omission.

*Abetment.*

*Article 71.*—Every person subject to these Articles who abets, within the meaning of the Indian Penal Code, sections 107 and 108, any of the offences specified in Articles 7, 8, 10, 13, 14, 18 and 19, may be punished with the punishment hereinbefore provided for such offence.

Every such person who abets, within the meaning of the Indian Penal Code, sections 107 and 108, any other offence punishable under this Act, shall be punished

with imprisonment of any description provided by this Act for the offence so abetted for a term which may extend to one-half of the longest term of such imprisonment,

or with one-half of any other penalty awardable by the Court by which he is convicted,

or, if the offence is punishable with death or transportation for life, with transportation for a term not less than seven years or with imprisonment (with or without hard labour, and with or without solitary confinement) for a term which may extend to ten years.

The said sections of the Indian Penal Code are set forth in Part II of the Appendix to this Act.

## TITLE III.—JURISDICTION.

CHAPTER I.—*Courts Martial.**Kinds of Courts Martial.*

*Article 72.*—For the purposes of these Articles, there shall be eight kinds of Courts Martial, (that is to say),—

(1).—General Courts Martial.

(2).—Detachment General Courts Martial.

(3.) District

- (3).—District Courts Martial.
- (4).—Garrison Courts Martial.
- (5).—Regimental Courts Martial.
- (6).—Regimental Detachment Courts Martial.
- (7).—Detachment Courts Martial, and
- (8).—Summary Courts Martial.

(1).—*General Court Martial.*

*Appointment of General Court Martial.*

*Article 73.*—A General Court Martial may be appointed—

(a).—By the Commander-in-Chief of a Presidency :

(b).—By any Officer authorized to appoint General Courts Martial by warrant of the Commander-in-Chief of a Presidency :

(c).—By any Officer in actual command of Native troops who is authorized to appoint General Courts Martial by order of the Governor General of India in Council, the Governor of Fort St. George in Council, or the Governor of Bombay in Council :

(d).—By any Officer commanding Native troops not attached to the forces of a Presidency who is authorized to appoint General Courts Martial by warrant which the Governor General of India in Council has empowered the Commander-in-Chief in India to issue.

*Composition of such Court.*

*Article 74.*—Except as hereinafter provided, every General Court Martial shall, if held in British India, consist of not less than nine Commissioned Officers, but may, if held out of British India, consist of seven Commissioned Officers, if a greater number cannot be conveniently assembled.

*Composition of such Court appointed under Orders in Council.*

*Article 75.*—A General Court Martial appointed under the authority of an Order in Council shall consist of not less than five Commissioned Officers, and shall, if so provided in the Order, be composed either of European or of Native Commissioned Officers at the discretion of the Officer appointing it.

*Powers*

*Powers of such Court.*

*Article 76.*—A General Court Martial shall have power to try all persons subject to these Articles accused of mutiny or of any other offence punishable under this Act, and to pass sentences of death,

Transportation for life or for any period not less than seven years,

Imprisonment (with or without hard labour, and with or without solitary confinement) for any term not exceeding fourteen years,

Dismissal from the service,

Suspension from rank, pay and allowances for any stated period,

Degradation,

Loss of standing,

Reduction to the ranks,

Corporal punishment not exceeding fifty lashes,

Forfeiture of additional pay, good conduct pay, and claim to pension,

Forfeiture of arrears of pay and allowances,

Stoppages.

Whenever any person is convicted of any offence for which he shall be transported or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that all the rents and profits of his moveable and immoveable estate during the period of his transportation or imprisonment shall be forfeited to Government, subject to such provision for his family and dependents as the Government may think fit to allow during such period.

*(2).—Detachment General Court Martial.**Appointment of such Court Martial.*

*Article 77.*—When any portion of Her Majesty's troops is serving in any place not in British India, and not within the dominions of the Princes and States of India in alliance with Her Majesty, wherein Her Majesty's forces are permanently stationed, a Detachment General Court Martial may be appointed :—

(a).—By the Commander-in-Chief of a Presidency:

(b).—By any Officer authorized to appoint Detachment General Courts Martial by warrant of the Commander-in-Chief of a Presidency;

(c).—By



(c).—By the Officer in actual command of such troops, upon complaint being made of an offence against the person or property of any resident of such place, committed by any person under such Officer's command and subject to these Articles.

*Its Composition and Powers.*

*Article 78.*—Such Court Martial shall consist of not less than three Commissioned Officers, and shall have the same powers as a General Court Martial.

(3).—*District Court Martial, and*

(4).—*Garrison Court Martial.*

*Appointment of such Courts.*

*Article 79.*—A District or Garrison Court Martial may be appointed—

(a).—By the Commander-in-Chief of any Presidency:

(b).—By any Officer authorized to appoint District or Garrison Courts Martial (as the case may be) by warrant of the Commander-in-Chief of any Presidency :

(c).—By any Officer in actual command of Native troops authorized to appoint District or Garrison Courts Martial (as the case may be) by order of the Governor General of India in Council, the Governor of Fort St. George in Council, or the Governor of Bombay in Council :

(d).—By any Officer commanding Native troops not attached to the forces of a Presidency authorized to appoint District or Garrison Courts Martial (as the case may be) by warrant which the Governor General of India in Council has empowered the Commander-in-Chief in India to issue.

*Composition of such Courts.*

*Article 80.*—(a). Except as hereinafter provided, a District or Garrison Court Martial shall consist of seven Commissioned Officers, unless that number cannot conveniently be assembled, in which case such Court may consist of not less than five such Officers.

(b). A District Court Martial appointed under the authority of an Order in Council, may consist of any number of Commissioned Officers not less than three; and may, if so provided in the Order, be composed either of European or of Native Commissioned Officers at the discretion of the Officer appointing it.

*Officers*

*Officers composing such Courts.*

*Article 81.*—A District or Garrison Court Martial may, when necessary, be composed wholly of Officers of the regiment or corps to which the accused belongs: Provided that on the trial of a Sub-Assistant Surgeon, Hospital Assistant, Native Doctor or Warrant Officer, not more than two Officers of the same regiment, corps, detachment, depôt or department as the accused shall sit upon any such Court.

*Powers of such Courts.*

*Article 82.*—A District or Garrison Court Martial shall have power to try all persons subject to these Articles, other than Commissioned Officers, for any offence other than mutiny made punishable by these Articles, and to pass sentences of—

Imprisonment (with or without hard labour, and with or without solitary confinement) for a term not exceeding one year,  
Dismissal from the service,  
Suspension from rank, pay and allowances,  
Degradation,  
Loss of standing,  
Reduction to the ranks,  
Corporal punishment not exceeding fifty lashes,  
Forfeiture of additional pay, good-conduct pay and claim to pension,  
Forfeiture of arrears of pay and allowances,  
Stoppages.

(5).—*Regimental Court Martial.*

*Appointment of such Court.*

*Article 83.*—A Regimental Court Martial may be appointed by the Officer commanding any regiment or corps.

*Composition of such Court.*

*Article 84.*—A Regimental Court Martial shall consist of not less than five Commissioned Officers, unless that number cannot conveniently be assembled, in which case such Court may consist of not less than three such Officers.

*Powers*

*Powers of such Court.*

*Article 85.*—A Regimental Court Martial shall have power to try—

(a).—All persons subject to these Articles, other than Commissioned Officers, Sub-Assistant Surgeons, Hospital Assistants, Native Doctors and Warrant Officers, for any offence other than mutiny, desertion or disgraceful conduct, punishable under these Articles, when committed on the line of march, or on board any vessel :

(b).—Any offence punishable under this Act, and not within the ordinary jurisdiction of a Regimental Court Martial, other than mutiny, desertion and disgraceful conduct, when the Officer commanding the Division or District directs it to be tried by a Regimental Court Martial ; and

(c).—Any offence punishable under these Articles, other than offences not within the ordinary jurisdiction of a Regimental Court Martial—

and to pass sentences of—

Dismissal,

Loss of standing,

Reduction to the ranks,

Imprisonment (with or without hard labour and with or without solitary confinement) for a term not exceeding six months,

Corporal punishment not exceeding fifty lashes,

Forfeiture of arrears of pay and allowances,

Stoppages.

(6).—*Regimental Detachment Court Martial, and*

(7).—*Detachment Court Martial.*

*Appointment of Regimental Detachment Court Martial.*

*Article 86.*—A Regimental Detachment Court Martial may be appointed by the Officer commanding a detachment of his own regiment or corps :

*Appointment of Detachment Court Martial.*

*Article 87.*—A Detachment Court Martial may be appointed,—

(a).—By the Officer commanding any Station, Force or Detachment of men of different regiments or corps ;

(b).—By



(b).—By the Officer in command of any detachment when any offence not within the ordinary jurisdiction of a Regimental Court Martial (other than mutiny, desertion, or disgraceful conduct), is committed on the line of march, or on board any vessel.

*Composition of such Courts.*

*Article 88.*—A Regimental Detachment Court Martial and a Detachment Court Martial shall consist of not less than five Commissioned Officers, unless that number cannot conveniently be assembled, in which case such Court may consist of not less than three Commissioned Officers.

*Powers of such Courts.*

*Article 89.*—A Regimental Detachment Court Martial and a Detachment Court Martial shall have the same powers as a Regimental Court Martial.

(8).—*Summary Courts Martial.*

*Article 90.*—(a). Subject to the provisions and restrictions contained in Articles 91, 92, 93, 94, 125 and 126, a Summary Court Martial may be held by the European Commissioned Officer who is in actual command, for the time being, of any regiment or corps,

or of any detachment consisting of, or equivalent in strength to, three troops or companies,

or of any European corps or detachment to which Native details subject to these Articles are attached,

or who is in charge of any arsenal, ordnance establishment, or camp equipage depôt.

(b).—In detached situations, beyond sea, or out of British India, or on service in the field, or under any circumstances where, immediate example being necessary, a Detachment Court Martial cannot be assembled as provided in Article 87, and reference cannot be made to superior authority without detriment to the service, a Summary Court Martial may be held by the European Commissioned Officer commanding a detachment of any strength :

Provided that if the Officer is of less than five years' standing, he shall not carry into effect any sentence by such Court Martial, until it has received the approval

approval of the nearest superior Military Officer holding a command of not less than a regiment.

*Constitution of such Courts.*

*Article 91.*—At every Summary Court Martial, the Commanding Officer holding it shall alone constitute the Court.

*Persons triable by such Court.*

*Article 92.*—No Commanding Officer shall have power to try by a Summary Court Martial any Commissioned Officer, Sub-Assistant Surgeon, Hospital Assistant, Native Doctor, or Warrant Officer, or any person who is not liable to trial by Courts composed of Native Commissioned Officers; but all other persons subject to these Articles shall be liable to trial and punishment by a Summary Court Martial :

Provided that no person shall be so tried unless he is under the command of the Officer holding the trial.

*Offences triable by such Court.*

*Article 93.*—Any offence against these Articles, except mutiny, may be tried and punished by Summary Court Martial :

Provided that, when there is no emergent reason for immediate action, and reference can, without detriment to discipline, be made to superior military authority, a Commanding Officer shall not try by Summary Court Martial, without such reference, any of the following offences :—

Offences under Articles 8 to 23 both inclusive, ordinarily punishable by General Court Martial only :

Disgraceful offences under Articles 54, 55, 56, 60, 61 and 64; and

Offences against such Commanding Officer.

*Its powers.*

*Article 94.*—A Summary Court Martial held by any Officer Commanding a regiment or corps may award any sentence not exceeding that awardable by a District Court Martial.

A Summary



A Summary Court Martial held by any Commanding Officer other than the Officer Commanding a regiment or corps, may award any sentence not exceeding that awardable by a Regimental or Detachment Court Martial.

*Trial of grave offences by inferior Courts.*

*Article 95.*—Save, as provided by Article 85, clauses (a) and (b) and Article 89, no Commanding Officer shall try by a Regimental or Detachment Court Martial offences which are by these Articles declared to be punishable by a General, District or Garrison Court Martial only. But, as it may be expedient that some such offences should be tried by inferior Courts Martial, the Commanding Officer of any Regiment, Corps or Detachment shall, in every such instance, submit the case for the orders of the Officer Commanding the Division or District in which he is serving, and the Officer Commanding such Division or District, whether on or without such application, may direct trial by such kind of Court Martial as he thinks fit:

Provided that mutiny shall in no case be tried save by a General Court Martial, and that desertion and disgraceful conduct shall in no case be tried by any Court Martial inferior to a District or Garrison Court Martial.

The permission to try grave offences by District or Garrison, Regimental or Detachment Courts Martial, shall be entered upon the proceedings of such Court, and in the monthly return of trials furnished to Army Head Quarters.

*Courts composed of European Officers.*

*Article 96.*—The Governor General of India, or the Governor of any Presidency, may, by an order in Council, direct that any Court Martial appointed under these Articles, shall be composed of European instead of Native Commissioned Officers, or authorize any General or other Officer to appoint Courts Martial so composed at his discretion.

Any such Court Martial shall in such case be constituted accordingly, but shall in all other respects be governed by these Articles.

*Claim to be tried by European Officers.*

*Article 97.*—With the exception of cases of trial by Courts Martial appointed under Orders in Council, every person subject to these Articles, who is under orders for trial by Court Martial, may claim to be tried by European Officers.

When

When any such claim is made, the Court, whether a General, District, Garrison, Regimental or Detachment Court Martial, shall be composed of European instead of Native Commissioned Officers ; but shall in all other respects be governed by these Articles.

## CHAPTER II.—*Procedure.*

### *Limitation of trials.*

*Article 98.*—No person subject to these Articles shall be tried or punished by a Court Martial for any military offence after the expiration of three years from the date of such offence, unless the offender, by reason of absence or of some other manifest impediment, could not be arrested or confined and brought to trial within that period ; in which case he shall be liable to be tried at any time not exceeding two years after such impediment shall have ceased.

### *Place of trial.*

*Article 99.*—Any person subject to these Articles who commits any offence against them, may be tried and punished for such offence in any place whatever in the same manner as if the offence had been committed in such place.

### *Arrest or confinement of accused.*

*Article 100.*—Whenever any person subject to these Articles is accused of any military offence which his Commanding or other superior Officer considers should be tried by Court Martial, such Officer shall order the accused, if not below the rank of Non-Commissioned Officer, to be placed in arrest, or if below such rank, to be put in confinement, until he can be tried by a Court Martial, or discharged by proper authority.

No such person shall be detained in arrest or confinement longer than is necessary for the purposes of justice.

### *Judge Advocate.*

*Article 101.*—It shall not be necessary to appoint a Judge Advocate to any General Court Martial appointed under the authority of an Order in Council. But every other General Court Martial shall be attended by a Judge Advocate, who shall conduct the proceedings; and every District or Garrison, Regimental or Detachment Court Martial, composed of Native Commissioned Officers,

Officers, shall be attended by an European Superintending Officer of not less than four years' service, who shall conduct the proceedings.

*Interpreter.*

*Article 102.*—An Interpreter shall be appointed to every Court Martial, and shall, when the Court is composed of Native Officers, form part of such Court.

If no duly qualified Interpreter is available at the station or place where the Court Martial sits, the Officer appointing the Court, or the Officer Commanding in the Division, District, or place within or at which the trial is to be held, shall appoint any competent person to perform the duty of Interpreter.

When no other qualified or competent person is available, the Superintending Officer, or in the case of an European Court, the President, shall perform the duty of Interpreter.

No Interpreter shall, as such, have a vote upon any matter.

*President.*

*Article 103.*—At every Court Martial, whether composed of European or Native Commissioned Officers, the senior Officer shall sit as President, without special appointment as such.

In case of the death or unavoidable absence of the President, the next senior member shall take the place of President, without special appointment as such, and the trial shall proceed if the Court be still composed of the smallest number of members of which it is required by these Articles to consist.

*Conduct of Proceedings.*

*Article 104.*—In the case of any General Court Martial appointed under an Order in Council, or of any other Court Martial composed of European Commissioned Officers under Article 96 or 97, the President shall conduct the proceedings.

*Precedence of Native Officers.*

*Article 105.*—Risáldár Majors and Súbahdár Majors shall take precedence according to the dates of their commissions, and above all Súbahdárs or Risáldárs.

Sirdár



Sirdár Bahádurs and Bahádurs shall take rank only according to their respective commissions of Risáldár Major, Súbahdár Major, Risáldár, Risáidár Súbahdár, or Jemadár.

Risáldárs shall take rank with Súbahdárs, according to the dates of their commissions as Risáidárs, or if they have not been Risáidárs then according to the dates of their commissions as Risáldárs.

*Time of Trial, Adjournment and Re-assembly.*

*Article 106.*—Trials by Courts Martial may be carried on at any time without restriction.

The date and hour of the Court's original assembly shall be fixed by, or under the orders of the convening Officer; but the adjournment and re-assembly of a Court Martial shall be determined by the Court itself.

*Challenges.*

*Article 107.*—At all trials by Courts Martial, other than Courts Martial appointed under an order in Council or Summary Courts Martial, as soon as the Court is assembled, the names of the President and Members shall be read over to the prisoner, who shall thereupon be asked by the Officer conducting the proceedings, whether he objects to being tried by any Officer sitting on the Court.

If the prisoner objects to any such Officer, his objection, and also the reply thereto of the Officer objected to, shall be heard and recorded, and the remaining Officers of the Court shall, in the absence of the challenged Officer, decide on the objection.

When no challenge is made, or when challenge has been made and disallowed, or the place of every Officer successfully challenged has been filled by another Officer to whom no objection is made or admitted, the Court shall proceed as hereinafter provided.

*Interpreter's oath.*

*Article 108.*—The Officer conducting the proceedings shall then administer to the Interpreter, or, when necessary, shall himself make as Interpreter, an affirmation or oath as follows :—

“ I

“ I solemnly affirm, in the presence of Almighty God, that I  
 “ will faithfully interpret and translate the proceedings of this Court; and that  
 “ I will not divulge the sentence until it shall have been published by authority;  
 “ and, further, that I will not disclose or discover the vote or opinion of any  
 “ particular member of the Court unless required to give evidence thereof by a  
 “ Court of Justice or Court Martial, in due course of law.”

When oath is made instead of affirmation, the oath shall commence—

“ I do swear that I will faithfully interpret,” &c., and shall be  
 in all other respects in the above form, and shall end with the words, “ So  
 help me God.”

*Oaths of President and Members.*

*Article 109.*—The Interpreter, or the Officer conducting the proceedings,  
 shall then administer to the President and each of the Members of the Court  
 Martial an affirmation or oath in such of the following forms as shall be appro-  
 priate:—

*For European Officers.*

“ I solemnly affirm, in the presence of Almighty God, that I  
 “ will duly administer justice, according to the Indian Articles of War, without  
 “ partiality, favour or affection; and if any doubt shall arise, then, according to  
 “ my conscience, the best of my understanding, and the custom of war in the  
 “ like cases ; and that I will not divulge the sentence of the Court until it shall  
 “ be published by authority ; and, further, that I will not disclose or discover the  
 “ vote or opinion of any particular member of the Court, unless required to give  
 “ evidence thereof by a Court of Justice or a Court Martial, in due course of  
 “ law.”

When oath is made instead of affirmation, the oath shall commence—

“ I do swear that I will duly administer justice,” &c., and  
 shall be in all other respects in the above form, and shall end with the words,  
 “ So help me God.”

*For Native Officers of the Mussulman or Hindû religion, or of any other religion  
 for which it may be appropriate.*

“ I solemnly affirm, in the presence of Almighty God,  
 “ that I will duly administer justice according to the Indian Articles of War,  
 “ without



“ without partiality, favour or affection ; and if any doubt shall arise, then, ” according to my conscience, the best of my understanding, and the custom of war in the like cases ; and that I will not divulge the sentence of the Court until it shall be published by authority ; and, further, that I will not disclose or discover the vote or opinion of any particular member of the Court, unless required to give evidence thereof by a Court of Justice or a Court Martial, in due course of law.”

*Judge Advocate's oath.*

*Article 110.*—The Interpreter, or any other European Officer of the Court, shall then administer to the Judge Advocate, or Superintending Officer, the following affirmation or the following oath :—

“ I solemnly affirm, in the presence of Almighty God, that I will not, upon any account whatsoever, disclose or discover the vote or opinion of any particular member of the Court Martial, unless required to give evidence thereof as a witness by a Court of Justice or a Court Martial, in due course of law ; and that I will not, unless it be necessary for the due discharge of my official duties, disclose the sentence of the Court until it shall be published by authority.”

When oath is made instead of affirmation, the oath shall commence—

“ I do swear that I will not, upon any account whatsoever, disclose,” &c., and shall be in all other respects in the above form, and shall end with the words, “ So help me God.”

*Oaths of Witnesses.*

*Article 111.*—Every person giving evidence at a Court Martial shall be examined on oath, or on affirmation, where affirmation is appropriate and admissible, and shall be duly sworn or affirmed in such of the following forms as may be appropriate :—

*For Europeans and persons professing the Christian religion.*

“ I do swear that what I shall state shall be the truth, the whole truth, and nothing but the truth. So help me God”—

or,

“ I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth.”

*For*

*For Mussulman, Hindû, or other Native Witnesses.*

" I solemnly affirm, in the presence of  
 "Almighty God, that what I shall state shall be the truth, the whole truth, and  
 "nothing but the truth."

*Oaths to be binding on conscience.*

*Article 112.*—If none of the forms of oath or affirmation prescribed in Articles 108 to 111, both inclusive, are appropriate to any officer of a Court Martial or any witness, such officer or witness shall make oath or affirmation to the purport hereinbefore prescribed, in such form as the Court ascertains to be according to his religion or otherwise binding on his conscience.

*Re-swearing in case of several trials.*

*Article 113.*—When more trials than one are held by the same Court Martial, every officer of the Court and every witness before the Court, shall make a fresh oath or affirmation, as hereinbefore prescribed, notwithstanding any previous oath or affirmation.

*Presumptive evidence of desertion.*

*Article 114.*—If at any trial for desertion, it is proved that the person tried has been absent without authority for the space of two months, such proof shall be deemed sufficient presumptive evidence of desertion; and the Court may thereupon convict him of desertion, unless he proves that his absence was not wilful, or otherwise rebuts the presumption of desertion arising from the proof of his unauthorized absence.

*Reference by prisoner to Government Officer.*

*Article 115.*—If at any trial for desertion, absence without leave, overstaying leave, or not rejoining when warned for service, the person tried states, in his defence, any sufficient or reasonable excuse for his unauthorized absence, and refers in support thereof to any officer in the Civil or Military service of Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the Court shall address such officer, and adjourn until his reply is received.

The written reply of any officer so referred to shall, if signed by him, be received in evidence, and have the same effect as if made on oath or affirmation before the Court.

If

If the Court is dissolved before the receipt of such reply, or if the Court omits to comply with the provisions of this Article, the convening officer may, at his discretion, annul the proceedings and order a fresh trial by the same or another Court Martial.

*Trial for desertion.*

*Article 116.*—On any trial for desertion the accused may be found guilty either of desertion or of absence without leave.

*Evidence of previous convictions and general character.*

*Article 117.*—When any person subject to these Articles has been convicted by a Court Martial of any military offence, such Court Martial shall enquire into, and receive and record evidence of any previous convictions of such person, either by a Court Martial, or by a Court of Justice; and shall further, in the case of any person below the rank of a Warrant-officer, enquire into and record the general character of such person.

Evidence received under this Article may be either oral, or in the shape of entries in, or certified extracts from, the Court Martial Books; and it shall not be necessary to prove the signature to such certified extract, nor shall it be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

*Voting of Members.*

*Article 118.*—The members of a Court Martial shall preserve order; and in giving their votes upon any matter, shall begin with the junior in rank.

Except where otherwise specially provided, every decision shall be passed by a majority of votes; and where there is an equality of votes, as to either finding or sentence, the decision shall be in favour of the person tried.

In matters other than the finding or sentence, the President shall have a casting vote.

*Majority requisite to sentence of death.*

*Article 119.*—No sentence of death shall be passed by any General Court Martial, other than a General Court Martial held under an Order in Council, unless



less such sentence is concurred in by at least two-thirds of the Officers composing the Court, or by five out of seven; or four out of five Officers, when the Court consists of either of those numbers.

A General Court Martial held under an Order in Council may, by the votes of a majority of such Court, pass a sentence of death.

*Revision of finding or sentence.*

*Article 120.*—The finding or sentence of any Court Martial may be revised by order of the Officer authorized to dispose of the proceedings.

But no finding or sentence of a Court Martial shall be revised more than once; nor shall any evidence, save evidence as to previous convictions or general character, be received on a revision.

The Court, on revision, shall consist of the same, and the same number of Officers as were present when the original decision was passed, unless any such Officer or Officers shall be unavoidably absent.

In case of such unavoidable absence, the cause thereof shall be duly certified in the proceedings, and the Court shall proceed with the revision, provided it still consists of the smallest number of Officers of which such Court is by these Articles required to consist.

*Procedure to be generally followed.*

*Article 121.*—The procedure laid down in the Articles 106 to 119 (both inclusive) shall be adopted at all trials by Courts Martial save when otherwise specially ordered or provided.

*Summoning witnesses.*

*Article 122.*—The Judge Advocate, in the case of a General Court Martial, and the Officer ordering the trial in the case of any other Court Martial may, by summons under his hand, require the attendance before the Court, at a time and place to be mentioned in the summons, of any person, either to give evidence or to produce documents.

In the case of a witness amenable to military authority, the summons shall be sent to the Officer in actual command of the corps to which he belongs, and such Officer shall serve it upon him accordingly.

In

In the case of any other witness, the summons shall be sent to the Magistrate within whose jurisdiction he may be, or resides, and such Magistrate shall give effect to the summons as if the witness were required in the Court of such Magistrate.

When a witness is required to produce any particular document in his possession or power, the summons shall describe it with convenient certainty.

*Contempts of Court.*

*Article 123.*—Any witness duly summoned, or any other person who commits any contempt of Court in the presence of a Court Martial, or who commits any of the offences described in Articles 56, 67, or 68, shall, if subject to these Articles, be proceeded against as they direct; and shall, if not so subject, be delivered over to a Magistrate, who shall proceed against the offender in the same manner as if the offence had been committed before or towards a Court of Criminal Justice.

*Privilege of witnesses.*

*Article 124.*—Every witness, while proceeding to, attending on, or returning from, any Court Martial before which he has been summoned, shall be privileged from arrest in any civil suit or proceeding; and if arrested in any such suit or proceeding, may be discharged by order of such Court Martial.

SUMMARY COURTS MARTIAL.

*Persons to attend Summary Court Martial.*

*Article 125.*—Every Summary Court Martial shall be attended by two Commissioned Officers, European or Native, exclusive of the Commanding Officer holding the trial.

An Interpreter shall, in every case, attend at a Summary Court Martial; but when no other competent Interpreter is available, the Officer holding the trial, or one of the Officers in attendance thereat, may perform the duty of Interpreter.

No Interpreter shall, as such, have a vote upon any matter.

*Proceedings*



*Proceedings of such Courts.*

*Article 126.*—The proceedings of every Summary Court Martial shall be conducted in presence of all the Officers specified in Article 125, and shall be recorded in the English language in the manner usual at other Courts Martial.

*Oaths of Interpreter and Officer holding trial.*

*Article 127.*—The Interpreter at a Summary Court Martial shall first make oath or affirmation, as provided by Article 108, down to the words “published by authority;” and the Commanding Officer holding the trial shall then make oath or affirmation, as provided in Article 109, down to the words “custom of war in the like cases.”

The Officers in attendance shall not as such be sworn or affirmed.

*Evidence.*

*Article 128.*—All evidence at a Summary Court Martial shall be taken on oath or affirmation, as provided by Article 111.

Any previous convictions on record against the offender, and his general character, shall be recorded by the Commanding Officer as of his own knowledge, or proved as provided by Article 117.

*Signature and transmission of proceedings.*

*Article 129.*—The proceedings in every case in which a Regimental Court Martial or a Detachment Court Martial tries an offence not within the ordinary jurisdiction of a Regimental Court Martial, committed on the line of march or on board a vessel, shall be sent for the information of the Commander-in-Chief of the Presidency to which the Regiment or Detachment belongs, and of the Presidency within which they may be, or to which they are proceeding.

The proceedings of every Summary Court Martial shall, when closed, be signed by the Commanding Officer and the Officers attending the trial, and shall, without delay, be forwarded to the Officer Commanding the Division or District within which the trial was held; and such Officer, or the Commander-in-Chief in India, or of the Presidency in which the trial was held, is hereby authorized to set aside the trial for reasons based on the merits of the case, but not on any merely technical grounds.

When

When a Summary Court Martial is held in a force not attached to any Presidency, the Officer Commanding such force may exercise the powers given in this Article in regard to setting aside trials.

The proceedings of every other Court Martial shall, when closed, be signed by the members, and shall, without delay, be forwarded or delivered to the Officer under whose orders the trial has been held.

### CHAPTER III.—*Sentences.*

#### *Of General Courts Martial.*

*Article 130.*—(a). Any General Court Martial may, for any offence falling under Articles 7 to 23, both inclusive, and for such offences only, sentence any person subject to its jurisdiction to death, or to transportation for life, or for any period not less than seven years, or to imprisonment (with or without hard labour, and with or without solitary confinement) for any period not exceeding fourteen years.

(b).—Any General Court Martial may, for any offence falling under Article 54, 55 or 56 of these Articles, sentence any person as aforesaid to the penalties attached to such offences in Article 57, and may, for any other disgraceful conduct, award the penalties attached to that offence in Articles 136, 137 and 138.

(c).—Any General Court Martial may, in any case where no special punishments are prescribed, or, in addition to any special punishment, where so authorized, sentence any person amenable thereto to any punishment specified in Articles 131, 132, 133, 135, 137 and 138.

(d).—No Court Martial, other than a General Court Martial, shall have power to award a sentence of death, transportation, or imprisonment exceeding one year.

Any General Court Martial may sentence any Commissioned Officer to be dismissed the service or to be suspended from rank, pay and allowances for any stated period; or to be placed one or more steps lower in the list of his rank.

No Court Martial, other than a General Court Martial, shall have power to try or punish a Commissioned Officer.

*Of*

*Of General, District or Garrison Courts Martial.*

*Article 131.*—Any General, District or Garrison Court Martial may sentence a Sub-Assistant Surgeon, Hospital Assistant, Native Doctor or Warrant Officer to be dismissed the service; or to be suspended from rank, pay and allowances for any stated period; or to be reduced to a lower grade or class in his Department, or to be placed one or more steps lower in the list of his rank.

No Court Martial inferior to a District or Garrison Court Martial shall have power to try or punish any Sub-Assistant Surgeon, Hospital Assistant, Native Doctor or Warrant Officer.

*Reduction, Dismissal, Corporal punishment and Imprisonment.*

*Article 132.*—Any Court Martial may sentence a Non-Commissioned Officer to be reduced to the ranks; or to be placed one or more steps lower in the list of his rank;

Or may sentence any person subject to these Articles below the rank of Warrant Officer, to be dismissed the service; or to suffer corporal punishment not exceeding fifty lashes; or to imprisonment with or without hard labour, and with or without solitary confinement, for such periods as are hereinafter prescribed.

*Limit of Imprisonment.*

*Article 133.*—Except in the cases provided for in Articles 24 and 57, the limit of imprisonment, whether with or without hard labour and solitary confinement, awardable by Courts Martial under these Articles, shall be for General Courts Martial two years; for District or Garrison Courts Martial one year; and for Regimental or Detachment Courts Martial six months.

*Solitary Confinement.*

*Article 134.*—No person shall, under any such sentence, or under one or more sentences, be kept in solitary confinement more than eighty-four days in one year, or more than fourteen days at one time, and there shall be, between the periods of solitary confinement, intervals of ordinary imprisonment at least equal to the period of solitary confinement.

*Reduction*



*Reduction to ranks.*

*Article 135.*—No Non-Commissioned Officer shall be sentenced by any Court Martial to imprisonment or to corporal punishment, without being first sentenced to reduction to the ranks.

*Forfeiture of pay and pension.*

*Article 136.*—On a conviction of any disgraceful conduct, a General, District or Garrison Court Martial may, in addition to any other punishment which it is empowered to award, sentence the offender to forfeit all advantage as to additional pay, good-conduct pay and claim to pension on discharge, which might otherwise have accrued from the length or nature of his former service; or to forfeit all such advantage absolutely, whether it has accrued from former service or may accrue from future service.

*Forfeiture of arrears of pay.*

*Article 137.*—On any conviction of disgraceful conduct, if the offender be sentenced to dismissal from the service, or if his sentence involve dismissal under Article 155 or Article 157, he shall further be sentenced to forfeit any arrears of pay and allowances, or other public money, due to him at the time of his dismissal, or such portion thereof as may be required to make good any proved loss or damage arising out of his disgraceful conduct.

Any Court Martial may, in addition to dismissal, or to any punishment involving dismissal under Article 157, sentence any person whom it is authorized to try, to forfeit any arrears of pay and allowances, or other public money, due to him at the time of his dismissal, or such portion thereof as may be required to make good any proved loss or damage arising out of his misconduct.

*Stoppages.*

*Article 138.*—Every offender convicted of disgraceful conduct, whose dismissal from the service is not so awarded or involved as aforesaid, shall, in addition to any other punishment, be sentenced by the Court to be put under stoppages, to the extent provided by Article 139, until the amount of any proved loss or damage arising out of such conduct be made good.

And any Court Martial, in addition to any punishment other than, or not involving, dismissal, may sentence any person as aforesaid to be put under stoppages,

pages, to the extent specified in Article 139, until any proved loss or damage arising out of his misconduct be made good.

*Extent of Stoppages*

*Article 139.*—Stoppages under Article 138 shall not be awarded, whether under one or more than one sentence, to a greater extent than, in the case of an Officer, two-thirds, or in the case of any other person, one-half of his monthly pay and allowances; and shall not be so awarded as to extend beyond one year.

Any public money issued to the offender within the said period of one year, shall, for the purposes of this Article, be deemed to be pay and allowances.

*Sentence of Transportation or Imprisonment on person already sentenced.*

*Article 140.*—Whenever a sentence of transportation or imprisonment is passed by any Court Martial upon an offender already under sentence of transportation for a limited term, or of imprisonment, the Court may award transportation or imprisonment to commence on the expiration of such previous sentence; notwithstanding that the aggregate of any terms of imprisonment may thus exceed the limit of imprisonment which such Court is by these Articles empowered to award.

*Form of sentence of death.*

*Article 141.*—In awarding a sentence of death, a General Court Martial shall, at its discretion, direct that the offender shall “suffer death by being hanged by the neck until he be dead,” or shall “suffer death by being shot to death.”

CHAPTER IV.—CONFIRMATION AND COMMUTATION OF SENTENCES.

*Sentences to be confirmed or otherwise disposed of.*

*Article 142.*—Save in the case of a Summary Court Martial, no decision or sentence of any Court Martial shall be carried into effect until confirmed or otherwise disposed of by—

(a).—In the case of any Court Martial for the trial of any person within his command—the Commander-in-Chief of a Presidency: or

(b).—In the case of any Court Martial for the trial of any person under his command—any Officer authorized in this behalf by warrant of the Commander-in-Chief



in-Chief of any Presidency, but subject to any restrictions contained in the warrant: or

(c).—In the case of any Court Martial for the trial of any person under his command—any Officer in actual command of troops who is authorized in this behalf by the Governor General of India in Council, the Governor of Fort Saint George in Council, or the Governor of Bombay in Council :

(d).—In the case of any Court Martial for the trial of any person under his command—any Officer commanding Native troops not attached to the forces of a Presidency who is authorized in this behalf by warrant of the Commander-in-Chief in India :

(e).—In the case of a Detachment General Court Martial held beyond the limits of British India, and not within the dominions of the Princes and States of India in alliance with Her Majesty—the Officer appointing such Court Martial, unless the sentence of such Court Martial exceeds that awardable by a District or Garrison Court Martial, in which case the Commander of Her Majesty's forces with which the offender is serving, shall alone have power to confirm, remit, commute or annul such sentence:

(f).—In the case of a Regimental Court Martial for the trial of any person under his command—the Officer appointing such Court Martial:

(g).—In the case of a Regimental or other Detachment Court Martial for the trial of any person under his command, where the detachment consists of, or is equal in strength to, three troops or companies—the Commanding Officer:

(h).—But when any such Court Martial is held in a Detachment of less than, or not equal in strength to, three troops or companies, the sentence shall be submitted for confirmation to the Officer Commanding the prisoner's Regiment, or to the nearest superior Officer holding a command of not less than a Regiment, who is hereby empowered to dispose of such sentence in like manner as if the trial had been held by his own order :

Provided that in detached situations beyond sea, or out of British India, or on service in the field, or in cases where immediate example is necessary and reference cannot be made to such Regimental or other superior Commanding Officer without detriment to the service, the Officer Commanding any Detachment,

ment, whatever its strength, may dispose of and carry out the sentence of any Detachment Court Martial held by his order.

(i).—Any Commander-in Chief or Officer mentioned in clauses (a), (b), (c), (d), (e), (f) and (g) of this Article may, subject to the provisions of these Articles, and to the restrictions (if any) in the warrant (if any) by which he is authorized in this behalf, mitigate, remit, commute or annul any sentence to the execution of which his confirmation is necessary.

*Sentence of death.*

*Article 143.*—When a sentence of death has been passed by any General Court Martial, the Officer so authorized, in accordance with these Articles, may confirm such sentence and cause it to be carried into effect, or may, in lieu thereof, sentence the offender to transportation for life, or for any term not less than seven years, or to imprisonment (with or without hard labour, and with or without solitary confinement) for any term not exceeding fourteen years.

*Sentence of penal servitude or transportation.*

*Article 144.*—Notwithstanding anything hereinbefore contained, whenever any person, being an European or American or a legitimate lineal descendant of an European or American, is convicted of an offence punishable under these Articles with transportation, the Court shall sentence the offender to penal servitude instead of transportation, according to the provisions of Act No. XXIV of 1855.

When a sentence of transportation has been awarded by any General Court Martial, the Officer authorized, in accordance with these Articles, may confirm the sentence and cause it to be carried into effect, or may, in lieu thereof, sentence the offender to imprisonment (with or without hard labour, and with or without solitary confinement) for any term not exceeding fourteen years, and not exceeding the term of transportation awarded by the Court.

*Sentence of dismissal on Commissioned Officers, &c.*

*Article 145.*—A sentence of dismissal from the service passed by any Court Martial under these Articles upon a Commissioned Officer, Sub-Assistant Surgeon, Hospital Assistant, Native Doctor or Warrant Officer, may be commuted

commuted by the Officer duly authorized to confirm or otherwise dispose of such sentence, to suspension from rank, pay and allowances for any stated period.

*Any sentence on Commissioned Officers, &c.*

*Article 146.*—Except on foreign service, or when reference cannot, without detriment to discipline, be made to superior military authority, no decision or sentence passed upon any Commissioned Officer, Sub-Assistant Surgeon, Hospital Assistant, Native Doctor or Warrant Officer, shall be carried into effect until confirmed or otherwise disposed of by the Commander-in-Chief of the Presidency to which the offender belongs, or, when the offender is serving in a Presidency, by the Commander-in-Chief of such Presidency, or, when the offender belongs to a force not attached to any Presidency, by the Officer Commanding the force.

*Sentence of corporal punishment.*

*Article 147.*—A sentence of corporal punishment passed by any Court Martial may be commuted, by the Officer authorized to confirm or otherwise dispose of such sentence, to dismissal from the service, or to imprisonment without hard labour, and with or without solitary confinement, for any period not exceeding one year, which might have been awarded by such Court Martial.

*Sentence of imprisonment with hard labour.*

*Article 148.*—A sentence of imprisonment with hard labour passed by any Court Martial may be commuted, by the Officer authorized to confirm or otherwise dispose of such sentence, to dismissal from the service, or to imprisonment without hard labour, and with or without solitary confinement, for the term mentioned in the sentence, or for any shorter term.

*Sentence of reduction with corporal punishment or imprisonment.*

*Article 149.*—The Officer duly authorized to confirm or otherwise dispose of the sentence of any Court Martial may, in the case of a Non-Commissioned Officer sentenced by any such Court, mitigate a sentence of reduction to the ranks followed by corporal punishment or imprisonment to reduction only,

*Commutation of sentence of dismissal on Non-Commissioned Officers.*

or may commute a sentence of dismissal from the service to reduction to the ranks.

CHAPTER



## CHAPTER V.—EXECUTION OF SENTENCES.

*Transportation.*

*Article 150.*—Whenever the sentence of a General Court Martial awarding transportation is duly confirmed, or whenever a sentence of death is duly commuted to transportation, the offender shall be delivered over with a warrant of commitment, containing an authenticated copy of the sentence or commuted sentence, to the Officer in charge of the nearest jail; and such Officer shall give effect to the sentence accordingly, under such order as he may receive from the Local Government.

*Imprisonment with hard labour.*

*Article 151.*—Whenever the duly confirmed sentence of any Court Martial awards imprisonment with hard labour, or whenever the sentence of any Court Martial is duly commuted to such imprisonment, the offender shall be delivered over with a warrant of commitment, containing an authenticated copy of the said sentence or commuted sentence, to the Officer in charge of the nearest jail; and such Officer shall detain the offender, under the rules in force, in such jail, according to the exigency of the warrant, or until he is discharged by due course of law.

*Place of imprisonment.*

*Article 152.*—The Commander-in-Chief of a Presidency may, as occasion requires, direct that any person under his command and sentenced under these Articles to imprisonment, shall be confined in any jail or other fit place for confinement, situate within the local limits of such command, or may order his removal from any place of confinement under military control to any other such place, or to any jail or other fit place of confinement situate within such local limits.

The Officer Commanding any force not attached to any Presidency, shall have the like powers so far as regards persons under his command and jails or other places of confinement situate within the local limits of such command.

*Transfer to military custody.*

*Article 153.*—When any person subject to these Articles is confined in any jail or other place not subject to military control, under a sentence of transportation or imprisonment, whether passed by a Court Martial or by a Court of Criminal Justice, the Government of India, or the Local Government of the Presidency

sidency or place wherein such person is confined, may order his transfer to military custody,

or may order his removal from one to any other such place of confinement within the territories of such Government.

The period during which such person is in custody during his removal shall be reckoned as part of his term of transportation or imprisonment.

*For forfeiture of pay during imprisonment.*

*Article 154.*—Any person subject to these Articles in receipt of public pay, who is imprisoned in any place under the sentence, or commuted sentence, of a Court Martial, or a Court of Criminal Justice, shall, during such imprisonment, if his sentence does not involve dismissal under Article 155 or Article 157, forfeit all pay and allowances, and be entitled to subsistence only, according to the rates prescribed in the regulations of the Government to which he is subject.

And any such person in confinement in any place whatsoever, whether as a punishment by his Commanding Officer, or under any charge of which he is subsequently convicted, shall, during such confinement, forfeit all pay and allowances, and be entitled to subsistence only, according to the regulations of the Government to which he is subject.

*Striking Convict off strength of Regiment.*

*Article 155.*—Every person sentenced by any Court Martial, or by any Court exercising jurisdiction in criminal cases, to transportation or to imprisonment with hard labour for any term exceeding three months, shall, in the case of a sentence by a Court Martial, from the date of confirmation of such sentence, and in the case of a sentence by a Criminal Court, from the date of such sentence, be struck off the strength of the regiment, corps or department to which he belongs.

*Non-re-admission of Convict.*

*Article 156.*—No person who has undergone any such period of transportation or imprisonment with hard labour, shall be re-admitted to the service, or be entitled to any pension :

Provided that in the case of any illegal sentence duly annulled as aforesaid, or of a pardon under Article 160, such person may, by order of the Government  
when



when the offence is non-military, or by order of the Commander-in-Chief of the Presidency when the offence is military, be re-admitted to service, or pension, as the case may be.

*Dismissal with ignominy.*

*Article 157.*—Any person below the rank of Warrant Officer sentenced under these Articles to dismissal, or to imprisonment with hard labour, or to corporal punishment for disgraceful conduct, shall, on the confirmation of such sentence, be dismissed with ignominy from the service.

*Publication of sentence for disgraceful conduct.*

*Article 158.*—A copy of every confirmed sentence of dismissal, imprisonment with hard labour, or corporal punishment for disgraceful conduct, and of the orders passed thereupon, shall be sent by the Adjutant General of the Army to the Chief Civil or Political Officer of the District wherein the offender's place of residence is situated; and such Officer shall publish the sentence and orders at the said place in such manner as may there be usual.

*Sentences of Summary Courts Martial.*

*Article 159.*—Any sentence awarded by a Summary Court Martial may be carried into effect forthwith on the Commanding Officer's own authority, and all provisions contained in Articles 151, 152, 153, 154, 155, 156, 157, 158, 160 and 161 as to execution of sentences and disposal of prisoners, shall equally apply to persons sentenced by Summary Court Martial.

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CHAPTER VI.—PARDONS AND REMISSIONS.

*Pardon of person convicted of military offence.*

*Article 160.*—The Governor General of India in Council, as regards any person subject to these Articles who has been convicted by a Court Martial of a military offence, and the Governors of Fort St. George in Council, and of Bombay in Council, and the Commander-in-Chief of any Presidency, as regards any such person within the territories subject to such Government, or under the command of such Commander-in-Chief, shall have power to pardon such person, and may, instead of granting a full pardon to any such person, remit wholly or in part any punishment awarded to him by a Court Martial,

and

and may order the restoration to such person of any service or other advantage forfeited under his sentence.

*Release of prisoners.*

*Article 161.*—Any Officer in charge of a jail, on receiving a notification under the hand of a Secretary to the Government of India, or to the Government of Fort St. George, or to the Government of Bombay, or under the hand of the Commander-in-Chief of any Presidency, or of the Officer Commanding any force not attached to a Presidency, or any Division or District, that the sentence under which any person subject to these Articles is imprisoned in such jail, has been annulled or remitted, or that any such person has been pardoned under Article 160, shall, on the authority of such notification alone, immediately release the prisoner or return him to military custody.

CHAPTER VII.—*Regimental Courts of Enquiry.*

*Article 162.*—If any person subject to these Articles is, without due authority, absent from his duty for two months, a Regimental Court of Enquiry, composed of European or Native Commissioned Officers, or of both in conjunction, shall forthwith assemble, and having received proof on oath or affirmation of the unauthorized absence, shall declare the same, and the period thereof; and the Officer Commanding the Regiment or Corps shall record such declaration in the regimental books.

If the person absent does not afterwards surrender or is not apprehended such record shall have the legal effect of a conviction of desertion.

If he surrenders or is apprehended, such record, or a copy thereof, purporting to bear the signature of the Officer having the custody of the regimental books, shall, on the trial of such person for desertion, be presumptive evidence of the facts therein recorded; and on proof of the identity of the prisoner with the person therein-mentioned, he may be found guilty of desertion.

*Persons absent as Prisoners of War.*

*Article 163.*—No person subject to these Articles shall be entitled to any pay or allowances or other public money, or to reckon service during any absence as a prisoner of war.

But

But when such person rejoins the service, enquiry shall be made by a Court Martial into the circumstances of his absence; and unless it is proved to the satisfaction of such Court that he was taken prisoner through his own wilful neglect of duty, or that he had served with or under, or aided the enemy, or that he had not, as soon as possible, returned to the service, he may be recommended by the Court to receive either the whole or any portion of the arrears due to him, and to reckon his service.

Such recommendation duly confirmed by the Commander-in-Chief of the Presidency, or by the Officer Commanding any force not attached to a Presidency, to which the said person belongs, shall entitle him to receive such arrears and reckon service accordingly.

#### TITLE IV.—POWERS OF OFFICERS INDEPENDENTLY OF TRIAL.

##### *Reduction to ranks.*

*Article 164.*—The Commander-in-Chief of a Presidency, and the Officer Commanding any force not attached to a Presidency, shall have, respectively, power to reduce to the ranks Non-Commissioned Officers under their respective command.

##### *Minor Punishments.*

*Article 165.*—The Commander-in-Chief in India shall, under the authority of the Governor General in Council, prescribe the minor punishments to which persons subject to these Articles shall for light offences be liable, without the intervention of a Court Martial, and shall specify the Officer or Officers by whom, and the extent to which, such minor punishments may be awarded.

No such minor punishment shall be awarded by a Court Martial; and, unless otherwise specially provided by the said Commander-in-Chief, no Commissioned Officer, Sub-Assistant Surgeon, Hospital Assistant, Native Doctor or Warrant Officer, shall be liable to any such minor punishment.

Good-conduct pay shall not necessarily be forfeited on the infliction of a minor punishment, but forfeiture thereof may be awarded as a substantive punishment, either by order of the Commanding Officer or by sentence of a Court Martial, as may from time to time be prescribed in the General Orders of the Commander-in-Chief in India or of the Commander-in-Chief of the Presidency, as the case may be.

Whenever



Whenever a Soldier is convicted by a Court Martial, his good-conduct pay shall cease.

Forfeiture of good-conduct pay may be awarded in addition to any other minor punishment.

*Offences of Native Followers.*

*Article 166.*—For any offence in breach of good order, the Commanding Officer of any regiment, corps or detachment, whether European or Native, in camp, or at any frontier post at which troops are stationed, and to which this Article may be specially extended by the Governor General of India in Council, the Governor of Fort St. George in Council, the Governor of Bombay in Council, or any other Local Government, may sentence any Native follower of such regiment, corps or detachment, if above the degree of a menial servant, to pay a fine not exceeding fifty rupees, or, in default of payment, or in lieu thereof, to imprisonment for any period not exceeding thirty days; or if the Native follower be not above the degree of a menial servant, to imprisonment not exceeding seven days, or to corporal punishment not exceeding twelve strokes of a rattan.

Imprisonment awarded under this Article may be carried out in a military guard, or in a jail, as ordered by the said Commanding Officer; and the Officer in charge of any jail shall, on the delivery to him of the person of the offender, with a warrant under the hand of the said Commanding Officer, detain the offender according to the exigency of the warrant, or until he is discharged by due course of law.

*Complaints against Officers.*

*Article 167.*—Any person subject to these Articles, who deems himself wronged by any superior or other Officer, may, if not attached to a troop or company, complain to the Officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the Officer Commanding the same.

When the Officer complained against is the Officer to whom any other complaint should, under this Article, be preferred, the aggrieved person shall complain to such Officer's next superior Officer.

No such complaint shall be made to any Officer other than those indicated in the former part of this Article.

Every

Every Officer receiving any such complaint shall examine into it, and, when necessary, refer it to superior authority.

Every such complaint shall be preferred through such channels as may be from time to time prescribed by proper authority ; and any person preferring a frivolous or groundless complaint shall be liable to trial by any Court Martial competent to try him, and to such punishment, other than dismissal, corporal punishment, or imprisonment with hard labour, as the Court is empowered by these Articles to award.

*Provost Marshals.*

*Article 168.*—For the prompt and instant repression of irregularities and offences committed in the field or on the line of march, Provost Marshals shall be appointed by the Commander-in-Chief of the Presidency, or the Officer Commanding the Forces in the field ; and the powers and duties of such Provost Marshals shall be regulated according to the established custom of war and the rules of the service.

*Their duties and powers.*

*Article 169.*—The duties of a Provost Marshal so appointed are to take charge of prisoners confined for offences of a general description, to preserve good order and discipline, and to prevent breaches of the same by persons belonging or attached to the Army.

The Provost Marshal may punish, corporally, then and there, any person amenable to these Articles below the rank of Warrant Officer, who, in his view or in the view of any of his assistants, commits any breach of good order and military discipline :

Provided that such punishment shall be limited to the necessity of the case, and shall accord with the orders which the Provost Marshal may from time to time receive from the Officer Commanding the troops :

Provided also that the orders of the said Commanding Officer shall in no case authorize such corporal punishment in excess of that awardable by sentence of a Court Martial.

If the actual commission of the offence is not witnessed by the Provost Marshal, or any of his assistants, but sufficient proof can be obtained of the offender's



offender's guilt, he shall report the case to the Commander of the Troops, who shall deal with the case as he may deem most conducive to the maintenance of good order and military discipline.

TITLE V.—NON-MILITARY OFFENCES.

*Offences committed within jurisdiction of Criminal Court.*

*Article 170.*—Any person subject to these Articles, who, at any place in British India within the jurisdiction of any Court of Criminal Justice established by Her Majesty, or by the Government of India, or by the Local Government, is accused of any offence against the Indian Penal Code, and not included in the foregoing Articles, shall be delivered over to the nearest Magistrate to be proceeded against according to law.

All persons in, or attached to, the Army, are hereby required, upon application duly made to them for that purpose, to assist the Officers of Justice in apprehending and securing any such accused person.

Any person in, or attached to, the Army, wilfully neglecting or refusing so to assist shall be punished with any punishment, other than death or transportation, awardable under these Articles.

*Offences committed out of British India.*

*Article 171.*—In any place out of British India, offences against the Indian Penal Code, and not included in the foregoing Articles shall, when committed by any person amenable to these Articles, be cognizable by a General Court Martial to be convened by any Officer who is empowered by warrant, or Order in Council, or by Article 77, to appoint General Courts Martial.

*General Court Martial for trial of such offences.*

*Article 172.*—The provisions of these Articles as to the composition and procedure of General Courts Martial, shall, with the exception of those contained in Article 117, apply to General Courts Martial for the trial of non-military offences :

Provided that such General Courts Martial shall, in every case, be attended by a Judge Advocate.

*Sentences*

*Sentences of such Court.*

*Article 173.*—A General Court Martial held for the trial of a non-military offence, shall, on the conviction of any offender, award punishment in accordance with the provisions of the Indian Penal Code.

*Confirmation of sentences.*

*Article 174.*—No decision or sentence passed by any such General Court Martial shall be carried into effect until confirmed or otherwise disposed of by the authority which, under these Articles, is empowered to confirm or otherwise dispose of the sentence of such General Court Martial; and no sentence of death shall be carried into effect until confirmed by the Commander-in-Chief of the Presidency to which the offender belongs, or, when the offender is beyond the limits of British India, until confirmed by the Officer Commanding Her Majesty's Forces with which the offender is serving, or when the offender does not belong to any Presidency, until confirmed by the Commander-in-Chief in India.

*Commutation of sentences.**Prisoners.*

*Article 175.*—All the provisions contained in Articles 143, 144, 148, 150, 151, 152, 153, 154, 155, 156 and 161, relating to the disposal of sentences and of sentenced prisoners, shall apply to persons sentenced by a General Court Martial for a non-military offence.

## TITLE VI.—EFFECTS OF DECEASED MEN AND OF DESERTERS.

*Article 176.*—When any person subject to these Articles dies, or is killed in the field, the Officer Commanding the regiment, corps or detachment, or the Officer in charge of the department to which such person belonged, shall, if no representative in interest of such person be on the spot, secure his effects in camp or quarters, and cause an inventory thereof to be made, and a duplicate of such inventory to be lodged with the Officer Commanding, or in charge of, the regiment, corps, detachment or department to which the deceased belonged.

*Sale of effects and discharge of debts.*

*Article 177.*—If there be no representative on the spot, or readily accessible, such Officer shall, without any representation taken out, publicly sell such  
part

part of the effects of the deceased in camp or quarters as do not consist of money, and shall pay thereout the debts of the deceased in camp or quarters, the expense of his funeral ceremonies, and his regimental debts of every description; and shall pay the surplus (if any) to the representative in interest of the deceased.

*Remittal of Surplus.*

*Article 178.*—In the event of no claim for the surplus of the deceased person's estate being made and established within twelve months of his death, the amount in the hands of the Officer in charge of the estate shall be remitted to the Controller General of Accounts at Calcutta, or to the Accountant General to the Government of Fort St. George or of Bombay ; or, if the deceased shall have belonged to a force not under any Presidency, to the Controller General of Accounts at Calcutta.

*Sale of effects of Deserters.*

*Article 179.*—The effects in camp or quarters of a deserter shall be publicly sold, and the proceeds, after payment thereout of all regimental or departmental claims, shall be remitted by the Officer Commanding, or in charge of, the regiment, corps, detachment or department to which the deserter belongs, to the Controller General of Accounts at Calcutta, or to the Accountant General to the Government of Fort St. George or of Bombay.

*Remittal of proceeds.*

If the deserter belongs to a force not attached to any Presidency, then the said proceeds shall be remitted to the Controller General of Accounts at Calcutta.

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PART III.—MISCELLANEOUS.

*Prohibition of Second Trial.*

(a).—Persons subject to the Articles contained in Part II of this Act, who have been acquitted or convicted, either by a Court Martial or by a Court of Criminal Justice, of any offence, whether military or non-military, shall not be again tried or punished for the same offence by any Court whatsoever.

But any such person may be dismissed the service.

*Prohibition*



*Prohibition of Arrest for Debt.*

(b).—No person attested under this Act or any previous Articles of War for Her Majesty's Indian Army, shall, so long as he belongs to such Army, be liable to be arrested for debt under any process issued by, or by the authority of, any Court of Law.

The Judge of any such Court may examine into any complaint made by such person or his superior Officer, of the arrest of such person contrary to the intent of this Act, and may by warrant under his hand discharge such person, and shall award reasonable costs to the complainant, who may recover such costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining such process.

The arms, horse, clothes, equipments, regimental accoutrements and necessities of any such attested person shall not be seized, nor shall his pay and allowances or any part thereof be attached, in satisfaction of any judgment against him or any person whom he may represent.

*Breach of Cantonment Rules.*

(c).—When any offence in breach of any duly authorized Cantonment rule or regulation is committed by any person not subject to the said Articles, and not an European British subject or an Officer or Soldier, the Officer Commanding the Cantonment may, where there is no Cantonment Magistrate, summon or order the apprehension of the offender; and such Officer may (after personally investigating the case) sentence the offender to pay a fine not exceeding fifty rupees; or in default of payment of, or in lieu of, such fine, to imprisonment in any jail or military guard for a period not exceeding thirty days.

The Officer in charge of any jail shall, on the delivery to him of the person of the offender, with a warrant under the hand of the said Commanding Officer, detain the offender according to the exigency of the warrant, or until he is discharged by due course of law.

*Capture of Deserters.*

(d).—Whenever any person subject to the said Articles deserts, the Commanding Officer of the regiment, corps or detachment to which he belongs, shall give written information of the desertion to such Civil, Political, or Police authorities as, in his opinion, may be able to afford assistance towards the capture

ture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter, in like manner as if he were a person for whose capture a warrant had been issued by a Magistrate, and shall deliver the deserter when apprehended to military custody.

Such authorities shall also, by such means as appear to them best adapted for the purpose, prevent persons reasonably suspected to be subject to the said Articles from travelling through the districts subject to their jurisdiction, unless on duty, or furnished with a certificate of leave or discharge.

Any Police Officer may arrest, without warrant, any person so suspected, and shall bring him without delay before the nearest Magistrate, or the nearest Military Commanding Officer when no Magistrate is readily accessible, to be dealt with according to law.

*Apprehension of Military Offenders.*

(e).—Whenever any person subject to the said Articles, who is accused of any military offence, is within the jurisdiction of any Civil, Political, or Police Officer, such Officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect, signed by his Commanding Officer.

*Presumption as to signatures.*

(f).—In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an Officer in the civil or military service of Government shall, on production, be presumed to have been duly signed by the person and in the character by whom and in which it purports to have been signed, until the contrary is shown.

*Native Troops serving out of their own Presidency.*

(g).—When any portion of the Native troops belonging to any Presidency is serving within the limits of any other Presidency, such troops shall, during such service, for all the purposes of the said Articles, be under the authority and orders of the Commander-in-Chief of the Presidency in which they are serving:

Provided that it shall be lawful for the Governor General of India in Council to direct that, for the purposes of the said Articles, Native troops serving out of their own Presidency shall continue subject to the authority and orders of the Commander-in-Chief of the Presidency to which such troops belong.

*Power*



*Power to make Orders and issue Warrants.*

(h).—The Governor General of India in Council,  
The Governors of Fort St. George and Bombay in Council,  
The Commander-in-Chief of any Presidency,

may respectively make all orders and issue all warrants for holding Courts Martial or otherwise, which appear necessary for the purposes of this Act; and in the case of military offences requiring to be disposed of without delay, the Governor General of India in Council, and the Governors of Fort St. George and Bombay in Council may respectively further authorize any Officer empowered by Order in Council to confirm, commute, remit or annul sentences in such cases, to refer such sentences for orders to the Commander-in-Chief of the Presidency.

*Limitation of Powers.*

(i).—Nothing hereinbefore contained shall empower the Commander-in-Chief of a Presidency to re-admit to service or pension any person not within his command, or to authorize any Officer to appoint, or to confirm, commute, remit or annul the sentences of Courts Martial for the trial of any person not within the command of such Commander-in-Chief, except in the case specified in the proviso in clause (g) of this Part,

or shall empower any Government to give directions as to the composition of, or to authorize the appointment of, Courts Martial in any place for the time being subject to any other Government.

Nothing in this Act shall be deemed to affect the authority conferred on the Commander-in-Chief in India by any Act of Parliament or by Royal warrant or commission.

*Power to make Rules.*

(j).—It shall be lawful for the Governor General of India in Council from time to time to make rules consistent with this Act, for the guidance of Officers, whether Military, Civil, or Political, in all matters connected with its enforcement.

All such rules shall be published in the *Gazette of India*, and shall thereupon be deemed to have the force of law.

The Commander-in-Chief in India, as regards the Presidency of Fort William and Forces not attached to any Presidency, may, with the previous sanction

sanction of the Governor General of India in Council, and the Commanders-in-Chief of the Presidencies of Fort Saint George and Bombay, as regards their respective Presidencies, may, with the previous sanction of the Local Government, from time to time substitute for the forms of affirmation given in Articles 109 and 111 as appropriate to Native Officers and witnesses, such other forms as may be thought appropriate to Native Officers and witnesses of any religion.

*Articles to be read periodically.*

(k).—The following Articles, namely, Articles 3, 4, 5, 7 to 71, both inclusive, 90, 91, 92, 93, 94, 125, 126, 130, 131, 132, 133, 135, 136, 137, 138, 139, 154, 167 and 176, shall be read once in every three months at the head of every regiment, corps, troop, or company in the service.

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## APPENDIX.

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### PART I.—DEFINITIONS IN THE INDIAN PENAL CODE.

[See PART I, CLAUSE (e).]

*Wrongful gain.*

23. “Wrongful gain” is gain, by unlawful means, of property to which the person gaining is not legally entitled.

*Wrongful loss.*

“Wrongful loss” is the loss, by unlawful means, of property to which the person losing it is legally entitled.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

*Dishonestly.*

24. Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing “dishonestly.”

*Fraudulently.*

*Fraudulently.*

25. A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.

*Reason to believe.*

26. A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing, but not otherwise.

OF HURT.

*Hurt.*

319. Whoever causes bodily pain, disease, or infirmity to any person is said to cause hurt.

*Grievous Hurt.*

320. The following kinds of hurt only are designated as "grievous" :—

*First.*—Emasculation.

*Secondly.*—Permanent privation of the sight of either eye.

*Thirdly.*—Permanent privation of the hearing of either ear.

*Fourthly.*—Privation of any member or joint.

*Fifthly.*—Destruction or permanent impairing of the powers of any member or joint.

*Sixthly.*—Permanent disfiguration of the head or face.

*Seventhly.*—Fracture or dislocation of a bone or tooth.

*Eighthly.*—Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

*Voluntarily causing hurt.*

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

*Voluntarily*



*Voluntarily causing grievous hurt.*

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause, or knows himself to be likely to cause, is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

*Explanation.*—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

*Illustration.*

A, intending, or knowing himself to be likely, permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days; A has voluntarily caused grievous hurt.

## OF CRIMINAL FORCE AND ASSAULT.

*Force.*

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

*First.*—By his own bodily power.

*Secondly.*—By disposing any substance in such a manner that the motion, or change, or cessation of motion takes place without any further act on his part, or on the part of any other person.

*Thirdly.*—By inducing any animal to move, to change its motion, or to cease to move.

*Criminal Force.*

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the

the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

*Illustrations.*

(a). Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to Z, A has used criminal force to Z.

(b). Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, A has committed criminal force to Z.

(c). Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(d). A intentionally pushes against Z in the street. Here A has, by his own bodily power, moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z, and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, he has used criminal force to Z.

(e). A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes, or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(f). A



(f). A intentionally pulls up a woman's veil. Here A intentionally uses force to her; and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy her, he has used criminal force to her.

(g). Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally, by his own bodily power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling: A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.

(h). A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear, or annoyance to Z, he uses criminal force to Z.

#### *Assault.*

351. Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

*Explanation.*—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

#### *Illustrations.*

(a). A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(b). A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c). A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances might not amount to an assault, the gesture explained by the words may amount to an assault.

378. Whoever

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Theft.

*Explanation 1.*—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

*Explanation 2.*—A moving, effected by the same act which effects the severance, may be a theft.

*Explanation 3.*—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

*Explanation 4.*—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

*Explanation 5.*—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

#### *Illustrations.*

(a). A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession, without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b). A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c). A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d). A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent, A has committed theft.

(e). Z,

(e). Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f). A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g). A finds a ring lying on the high-road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h). A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i). A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j). If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k). Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he had borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(l). A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z, as a reward



reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(m). A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent, for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n). A asks charity from Z's wife. She gives A money, food, and clothes, which A knows to belong to Z, her husband. Here, it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(o). A is the paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(p). A in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

#### OF EXTORTION.

##### *Extortion.*

383. Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion."

##### *Illustrations.*

(a). A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b). A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(c). A

(c). A threatens to send club-men to plough up Z's field, unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d). A by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper, and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

## II.—INDIAN PENAL CODE, CHAPTER V. OF ABETMENT.

### SECTIONS 107 AND 108.

(See *Article 71.*)

#### *Abetment of a thing.*

107. A person abets the doing of a thing who—

*First.*—Instigates any person to do that thing ; or,

*Secondly.*—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

*Thirdly.*—Intentionally aids, by any act or illegal omission, the doing of that thing.

*Explanation 1.*—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

#### *Illustration.*

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact, and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

*Explanation 2.*—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

*Abettor.*



*Abettor.*

108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

*Explanation 1.*—The abetment of the illegal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act.

*Explanation 2.*—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

*Illustrations.*

(a). A instigates B to murder C. B refuses to do so, A is guilty of abetting B to commit murder.

(b). A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

*Explanation 3.*—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

*Illustrations.*

(a). A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b). A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act, and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c). A

(c). A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d). A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

*Explanation 4.*—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

*Illustration.*

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and as A instigated B to commit the offence, A is also liable to the same punishment.

*Explanation 5.*—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

*Illustration.*

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed, the offence defined in this section, and is liable to the punishment for murder.

## I N D E X.

(*Nothing hereinafter contained shall be deemed to have the force of law.*)

- Abandoning garrison, &c., Article 14.  
 Abetment of offences punishable under Act, Article 71.  
 Absence without leave, Article 30.  
     "       "       procedure in trial for, Article 115.  
     "       from camp without leave, Article 51.  
     "       from camp after retreat-beating, Article 52.  
     "       from cantonment or lines after tattoo, *ib.*  
     "       of President of Court Martial, Article 103.  
     "       excuse for, Article 115.  
     "       of officer on revision, Article 120.  
     "       from duty for two months, Article 162.  
     "       as prisoner of war, Article 163.  
 Accountant General, remittal to, Articles 178, 179.  
 Accoutrements, making away with or losing, Article 47.  
 Additional pay, forfeiture of, Articles 76, 82, 136.  
 Adjournment of Court Martial, Article 106.  
     "       of trial for desertion, absence without leave, overstaying leave, or not rejoining,  
     Article 115.  
 Adjutant General of Army to send copies of certain sentences and orders passed thereon,  
 Article 158.  
 Affirmation of person reported fit for duty, Article 1.  
     "       of interpreter, Article 108, at Summary Court, Article 127.  
     "       of President and Members, Article 109.  
     "       of Judge Advocate, Article 110.  
         See *Evidence*.  
 Aggravating disease or infirmity, Article 58.  
 Aiding intentionally, see *Abetment*.  
 Alarm, using words intended to create, in time of war, Article 23.  
     See *False Alarm*.  
 Allied State, station not in British India nor in, Articles 77, 142, clause (e).  
 Allowance, obtaining, by false statement, &c., Article 62.  
 American not triable by Court composed of Native Officers, Part I, clause (d), proviso.  
     "       when to be sentenced to penal servitude, Article 144.

Ammunition



- Ammunition, making away with or losing, Article 17.
- „ embezzlement or fraudulent misappropriation of Government, Article 54.
- „ furnishing false return of, Article 63.
- Annulment of sentences of Courts Martial, Article 142, clause (i).
- „ of sentence of Detachment General Court Martial, held neither in British India nor in allied Indian State, Article 142, clause (e).
- „ of illegal sentence, re-admission after, Article 156.
- Appearing armed when off duty, Article 49.
- Application of Articles, Part I, clause (d).
- „ for aid in apprehending person accused of military offence, Part II, clause (e).
- Apprehension of deserter, omission to cause, Article 28.
- „ of person breaking cantonment rules, Part II, clause (c).
- „ of person accused of military offence, Part II, clause (e).
- Arms, making away with, or losing, Article 47.
- „ embezzlement or fraudulent misappropriation of Government, Article 54.
- „ furnishing false return of, Article 63.
- 'Army' defined, Part I, clause (e).
- „ Head Quarters, monthly returns of trials furnished to, Article 95.
- Arrears of pay and allowances, forfeiture of, Articles 76, 82, 85, 137.
- Arrest, leaving, Article 36.
- „ of person accused of military offence, Article 100.
- „ detainment in, *ib.*
- „ witnesses privileged from civil, Article 124.
- „ of attested persons for debt, prohibited, Part III, clause (b).
- „ of persons suspected to be deserters, Part III, clause (d).
- See *Apprehension*.
- Arsenal, Summary Court Martial held by European Officer in charge of, Article 90.
- Articles, application of, Part I, clause (d).
- „ to be read to recruits, Article 1.
- „ to be read to troops every quarter, Part III, clause (k).
- Artificers, Articles apply to, Part I, clause (d).
- 'Assault' defined, Part I, clause (e) and Appendix No. 1.
- „ on superior officer, Article 8.
- „ on persons bringing provisions, Article 22.
- „ on sentry, Article 27.
- Assembly of Court Martial, Article 106.
- Assistance to enemy, Article 17.
- „ in apprehending and securing persons accused of non-military offences, Article 170.
- Assistant Provost Marshal, impeding or refusing to assist, Article 39.
- Attempt to use criminal force to superior officer, Article 8.

Attempt

- Attempt to force sentry, Article 37.
- „ to commit suicide, Article 48.
- Attestation, Article 2.
- 'Attested' defined, Part I, clause (e).
- „ person, dismissal of, Article 5.
- „ certificate to, Article 6.
- „ exempt from arrest for debt, Part III, clause (d).
- Bahādurs, precedence of, Article 105.
- Bāzārs, see *Superintendents*.
- Beating, causing reparation for, Article 43.
- Belief, see *Reason to believe*.
- Betraying watchword, Article 15.
- Bludgeon, see *Weapon*.
- Books, see *Court Martial Books*.
- Bribe, requiring or accepting, Article 45.
- British-born subjects, Articles not to apply to, Part I, clause (d), proviso.
- British India, sentences of Courts Martial held beyond limits of, Article 142, clauses (e), (g).
- Buglers, Articles apply to, Part I, clause (d).
- „ attestation of, Article 2.
- Camp, appearing without authority armed in, Article 49.
- „ being without authority two miles distant from, Article 51.
- Camp Equipage Dépôt, Summary Court Martial held by European Officer in charge of, Article 90.
- Cantonment Magistrates, saving of regulations defining office and powers of, Part I, clause (f).
- „ rule, procedure on breach of, Part III, clause (c).
- See *Police*.
- Carriage, exacting, Article 41.
- Casting vote of President of Court Martial, Article 118.
- Certificate to attested person dismissed or discharged, Article 6.
- „ travelling without, Part III, clause (d).
- „ of previous conviction, Article 117.
- Challenge by prisoner, Article 107.
- Character, enquiry into general, Article 117.
- Charge or declaration made to recruit, Article 1.
- Christian lineal descendants of British-born subjects not triable or punishable under Articles, Part I, clause (d), proviso.
- „ Europeans not being British subjects, and their Christian lineal descendants, triable only by Courts Martial composed of European Officers, *ib.*
- Civil Officer of District to publish sentence for disgraceful conduct, Article 158.
- „ authorities to take steps to capture deserter, Part III, clause (d), or other military offender, *ib.*, clause (e).
- „ „ rules for guidance of, Part III, clause (j').
- Clothes, making away with, or losing, Article 47.
- „ embezzlement or fraudulent misappropriation of Government, Article 54.

Clothes



Clothes, furnishing false return of, Article 63.

Commander-in-Chief in India may be empowered to authorize Officer commanding certain Native troops to appoint General Courts Martial, Article 73, clause (d).

„ „ „ may be empowered to authorize Officer commanding certain Native troops to appoint District or Garrison Courts Martial, Article 79, clause (d).

„ „ „ may set aside trial of Summary Court Martial, Article 129.

„ „ „ to prescribe minor punishments and specify Officer to award them, Article 165.

„ „ „ his confirmation of sentences of death, Article 174.

„ „ „ saving of his authority conferred by Act of Parliament or Royal warrant or commission, Part III, clause (i).

„ „ „ may substitute new forms of affirmation, Part III, clause (j)

„ „ of Presidency may order dismissal of a Commissioned Officer, Article 3, or of any other person subject to the Articles, Article 4.

„ „ „ may appoint General Court Martial, Article 73.

„ „ „ may appoint Detachment General Court Martial, Article 77.

„ „ „ may appoint District or Garrison Court Martial, Article 79.

„ „ „ transmission of proceedings of Regimental or Detachment Court Martial held on line of march or on road to, Article 129.

„ „ „ may set aside trial by Summary Court Martial, *ib.*

„ „ „ may confirm, mitigate, commute, remit and annul sentences of Courts Martial, Article 142, clauses (a), (b) and (i).

„ „ „ may delegate such powers, *ib.*, clause (b).

„ „ „ to confirm sentence on Commissioned Officer, Sub-Assistant Surgeon, Hospital Assistant, Native Doctor, and Warrant Officer, Article 146.

„ „ „ may direct offenders to be imprisoned in any jail, Article 152.

„ „ „ may order prisoner's removal from military jail, *ib.*

„ „ „ when he may order re-admission of convict, Article 156.

„ „ „ may pardon person convicted of military offence, Article 160.

„ „ „ may remit punishment awarded by a Court Martial, *ib.*

„ „ „ may order restoration of advantage forfeited, Article 160.

„ „ „ his confirmation of recommendation that prisoner of war may receive arrears, Article 163.

„ „ „ may reduce to ranks, Article 164.

Commander-in-Chief

- Commander-in-Chief of Presidency to appoint Provost Marshal, Article 168.
- ” ” ” to confirm sentences of death, Article 174.
- ” ” ” may make orders, and issue warrants, Part III, clause (h).
- ” ” ” reference of sentence to, *ib.*
- ” ” ” may substitute new forms of affirmation, Part III, clause (j).
- ‘Commanding Officer’ defined, Part I, clause (e).
- ” ” to make declaration to person reported fit for duty, Article 1.
- ” ” may dismiss attested person improperly re-enlisting, Article 5.
- ” ” to furnish certificate to attested person dismissed or discharged, Article 6.
- ” ” to constitute Summary Court Martial, Article 91.
- ” ” holding Summary Court to make oath or affirmation, Article 127,
- ” ” and to record previous conviction and general character of offender;  
Article 128,
- ” ” and to sign proceedings, Article 129.
- ” ” of cantonment, his jurisdiction in case of breach of cantonment rules,  
Part III, clause (c).
- ” ” to give information of desertion, Part III, clause (d).
- Commencement of Act, Part I, clause (b).
- Commissariat Officer, saving of regulations defining office and powers of, Part I, clause (f).
- Commissioned Officers, Articles apply to, Part I, clause (d).
- ” ” defined, Part I, clause (e).
- ” ” dismissal of, Article 3.
- ” ” forfeit claim to pension on dismissal, *ib.*
- ” ” General Court Martial to be composed of, Article 74.
- ” ” Detachment General Court Martial to be composed of, Article 78.
- ” ” District or Garrison Court Martial to be composed of, Article 80.
- ” ” Regimental and Detachment Courts Martial to be composed of, Articles  
84, 88.
- ” ” not triable by Summary Court Martial, Article 92.
- ” ” Summary Court Martial to be attended by two, Article 125,
- ” ” who are not to be sworn, Article 127,
- ” ” nor to sign proceedings, *ib.*
- ” ” triable or punishable only by General Court Martial, Article 130.
- ” ” may be dismissed, suspended, or placed lower by General Court Martial, *ib.*
- ” ” commutation of sentence of dismissal on, Article 145.
- ” ” confirmation of sentence on, Article 146.
- ” ” not liable to minor punishment, Article 165.
- Commutation of sentences of Courts Martial, Article 142, clauses (e) and (i).
- ” of sentences of Regimental Courts Martial, *ib.*, clause (f).
- ” of sentences of Regimental Detachment Courts Martial, *ib.*, clause (g).
- ” of sentences of Detachment General Court Martial, *ib.*, clause (e).

Commutation

Commutation of sentence of death, Article 143.

„ of sentence of dismissal, Article 145.

„ of sentence of corporal punishment, Articles 146, 147.

„ of sentence of rigorous imprisonment, Article 148.

„ of sentence of reduction with corporal punishment or imprisonment, Article 149.

„ of sentence of dismissal of Non-Commissioned Officer, *ib.*

„ of sentences for non-military offences, Article 175.

Complaint against Officer, Article 167.

„ penalty for frivolous, *ib.*

„ of soldier arrested for debt, Part III, clause (b).

Concealing mutiny or sedition, Article 7.

„ correspondence with enemy, Article 16.

„ desertion or harbouring of deserters, Article 28.

See *Abetment, Omission.*

Confinement, leaving, Article 36.

„ of person accused of military offence, Article 100.

„ detainment in, *ib.*

Confirmation of decisions and sentences of Courts Martial, Article 142.

„ of sentence of death, Articles 143, 174.

„ of sentence of transportation, Article 144.

„ of sentence on Commissioned Officer, &c., Article 146.

„ of recommendation of Court Martial in case of prisoner of war, Article 163.

„ of sentences of General Court Martial for non-military offences, Article 174.

Conniving, see *Abetment.*

Conspiracy against the State, concealing, Article 7.

See *Abetment.*

Contempt of Court Martial, Article 68.

„ „ „ procedure in case of, Articles 69, 123.

Controller General of Accounts, remittal to, Articles 178, 179.

Convening Officer to fix date and hour of original assembly of Court Martial, Article 106.

„ „ when he may annul the proceedings, and order fresh trial, Article 115.

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„ „ „ „ may authorize officer in actual command to appoint General, District or Garrison Courts Martial, Article 73, clause (c), Article 79, clause (c).

„ „ „ „ may direct that any Court Martial shall be composed of European Officers, Article 96.

„ „ „ „ may authorize any officer to appoint Courts Martial so composed, *ib.*

„ „ „ „ may authorize officer in actual command to dispose of sentences, Article 142, clause (d).

„ „ „ „ may order removal of prisoner to military custody or from one jail to another, Article 153.

„ „ „ „ may grant pardons for military offences, Article 160.

„ „ „ „ may extend Article providing for punishment of Native followers, Article 166.

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Governor General in Council may order dismissal of Commissioned Officer, Article 3, or of any other person subject to the Articles, Article 4.

” ” ” may authorize officer in actual command to appoint General, District or Garrison Courts Martial, Article 73, clause (c), Article 79, clause (c).

” ” ” may authorize Commander-in-Chief in India to empower Officer commanding certain Native troops to appoint General, District or Garrison Courts Martial, Articles 73, clause (d), 79, clause (c).

” ” ” may direct that any Court Martial shall be composed of European Officers, Article 96.

” ” ” may authorize any Officer to appoint Courts Martial so composed *ib.*

” ” ” may authorize officer in actual command to dispose of sentences, Article 142, clause (d).

” ” ” may order prisoner in jail to be transferred to military custody, or removed from one jail to another, Article 153.

” ” ” may grant pardons for military offences, Article 160.

” ” ” to sanction prescription of minor punishments, Article 165.

” ” ” may authorize Officer empowered by Order in Council to confirm, &c., sentences, to refer them for orders to Commander-in-Chief of Presidency, Part III, clause (h).

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” ” ” may make orders and issue warrants, Part III, clause (h).

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- Police in cantonments, saving of regulations defining power of officer in charge of, Part I, clause (f').
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„ attestation of, Article 2.

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# ACT V OF 1875.

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PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 9th February 1875.)*

*An Act to remove doubts as to the rights and liabilities of certain Native Soldiers.*

WHEREAS doubts have arisen as to the rights and liabilities of certain Native Soldiers who have been enrolled without having been attested, and it is expedient to remove such doubts ; It is hereby enacted as follows:—

Preamble.

I. Every person who has for the space of six months been in the receipt of military pay and been borne on the rolls of any Regiment, Corps, or Department of Her Majesty's Indian Army (of which the last pay-statement, if produced, shall be evidence), shall be deemed to have been duly enlisted, enrolled and attested, and shall not be entitled to claim his discharge on the ground of illegality or irregularity in his enlistment, enrolment or attestation, or on any other ground save such as may be recognised by the orders and customs of the service.



## ACT NO. XII OF 1891.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 21st March, 1891.)*

An Act ~~to repeal certain Obsolete Enactments~~  
and to amend certain other Enactments.

WHEREAS it is expedient that certain enactments specified in the first schedule to this Act which are spent, or have ceased to be in force otherwise than by express specific repeal, or have by lapse of time or otherwise become unnecessary, should be expressly and specifically repealed;

And whereas it is also expedient that certain formal amendments should be made in the enactments specified in the second schedule to this Act;

It is hereby enacted as follows:—

1. (1) This Act may be called the Repealing and Amending Act, 1891.

Title, extent  
and com-  
mencement.

(2) Save in so far as it applies expressly or by necessary implication to particular territory only, it extends to the whole of British India, inclusive of Upper Burma and British Baluchistan; and

(3) It shall come into force at once.

2. (1) The enactments specified in the first schedule are hereby repealed to the extent mentioned in the fourth column thereof.

Enactments  
in schedules  
repealed and  
amended  
respectively.

(2) The enactments specified in the second schedule shall be modified to the extent and in the manner mentioned in the fourth column thereof; but nothing in this sub-section shall affect any Act passed after this Act comes into force by the Governor of Madras in Council, the Governor of Bombay in Council, the Lieutenant-Governor of Bengal in Council or the

Lieutenant-



Lieutenant-Governor of the North-Western Provinces and Oudh in Council.

(3) The modifications hereby made in the Foreign Jurisdiction and Extradition Act, 1879, section 6, and the Cantonments Act, 1889, section 19, shall have effect as from the commencement of those Acts respectively. XXI of XII of

Savings.

3. The repeal by this Act of any enactment shall not affect any Statute, Act or Regulation in which such enactment has been applied, incorporated or referred to ;

and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognized or derived by, in or from any enactment hereby repealed;

nor shall the repeal by this Act of any enactment provide or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

## THE FIRST SCHEDULE.



## THE SECOND SCHEDULE.

## ENACTMENTS AMENDED.

A description or citation of a portion of an Act or Regulation includes the words, section or other part mentioned or referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

*Part I.—Acts of the Governor General in Council.*

1	2	3	4
Year.	No.	Subject or title.	Amendment.
1835	XIX	Assistant to Agent for Sardars, Dekkhan.	<i>Add the following section :—</i> 2. The provisions of the Code of Procedure in Civil Procedure appeals to Governor of Bombay relating to appeals to a High Court from decrees passed in appeal shall apply, so far as may be, to appeals to the Governor in Council under this Act.
1839	VII	Tahsildars, Madras.	In section 6, <i>for</i> the three last preceding sections <i>read</i> sections 3 and 5.
1846	I	Pleaders	In section 7, <i>for</i> the sections of Regulations <i>read</i> the section of the Regulation.
1850	XIX	Binding Apprentices.	In section 11, <i>for</i> section VIII <i>read</i> section 9. In section 20, <i>for</i> and, <i>where</i> the word occurs <i>before</i> administrators, <i>read</i> or.
1851	XII	Land-revenue, Madras Town.	In the preamble and section 1, <i>for</i> within the limits of the Town of Madras as defined in Section XII, Regulation II of 1802 of the Madras Code, <i>read</i> within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras.



THE SECOND SCHEDULE—*contd.**Part I.—Acts of the Governor General in Council—contd.*

1	2	3	4
Year.	No.	Subject or title.	Amendment.
1867	III	Gambling	In the preamble, <i>after</i> Fort William <i>insert</i> and.  In section 2, <i>for</i> Sections 13, 17 and 18 <i>read</i> Sections 13 and 17.
"	XXIII	Murderous Outrages, Punjab.	In section 10, <i>for</i> the Punjab Chief Court Act, 1866, <i>read</i> in any other enactment for the time being in force.
"	XXV	Printing Presses and Books.	In section 3, <i>before</i> of the publisher <i>insert</i> the name.
1868	V	Commissioner in Sindh.	In the schedule, <i>for</i> Act VII of 1854 (for the apprehension within the territories under the Government of the East India Company of persons charged with the commission of heinous offences beyond the limits of the said territories, and for delivering them up to justice, and to provide for the execution of warrants in places out of the jurisdiction of the authorities issuing them) <i>read</i> 'The Foreign Jurisdiction and Extradition Act, 1879; and <i>for</i> Act VII of 1865 (to give effect to rules for the management and preservation of Government forests) <i>read</i> The Indian Forest Act, 1878.
1869	V	Indian Articles of War.	In Part I, clause (c), <i>for</i> or any Act <i>read</i> in any Act.  In the heading to Article 170, <i>for</i> "committed" <i>read</i> "of which any person is accused."



## ACT NO. XII OF 1894.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 12th October,  
1894.)

An Act to amend the Articles of War for the  
Government of Her Majesty's Indian  
Forces.

WHEREAS it is expedient to amend the Articles of War for the Government of Her Majesty's Indian Forces; It is hereby enacted as follows :

1. (1) This Act may be called the Indian Articles of War Amendment Act, 1894; and

Title and  
commence-  
ment.

(2) It shall come into force on such date as the Governor General in Council may by notification in the Gazette of India fix in that behalf.

2. Part I, clause (c), of the Indian Articles of War (hereinafter called "the said Articles"), is hereby repealed.

Repeal of  
clause (c) of  
Part I of  
Indian Arti-  
cles of War.  
Substitution  
of new clause  
for clause (d)  
of Part I.

3. For Part I, clause (d), of the said Articles the following shall be substituted, namely:

“(d).—*Application of Articles.*

“These Articles shall apply to all—

- (a) persons to whom they actually apply at present ;
- (b) persons commissioned or gazetted as Native officers, or gazetted as warrant officers, of Her Majesty's Indian Forces ;
- (c) medical subordinates ;
- (d) persons attested under these Articles;
- (e) unattested recruits;

(f) persons

## (Section 4.)

(f) persons enrolled under these Articles;

(g) persons, not otherwise subject to military law, who, on active service, in camp, on the march, or at any frontier post specified by the Governor General in Council by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, Her Majesty's Indian Forces:

Provided as follows :

if any person claims to belong to a class to which the Army Act is, and these articles are not, applicable, the burden of proving that he belongs to that class shall lie upon him." 44 & 45  
Vict., c. 1

Substitution  
of new clause  
for clause  
(e) of Part I.

4. For Part I, clause (e), of the said Articles the following shall be substituted, namely :

“(e).—*Definitions.*

“In these Articles, unless there is something repugnant in the subject or context,—

(1) ‘notification’ means a notification published in the official Gazette:

(2) ‘prescribed’ means prescribed by rules made by the Governor General in Council or by any authority empowered by him in this behalf:

(3) ‘British officer’ means an officer holding a commission in Her Majesty's land forces, but does not include an honorary commissioned officer :

(4) ‘Native officer’ means an officer commissioned or gazetted as an officer holding a Native rank in Her Majesty's Indian Forces :

(5) ‘officer’ means a British officer or Native officer, but does not include a warrant officer or non-commissioned officer :

(6) ‘medical subordinate’ means a senior hospital assistant, a hospital assistant of the first, second or third class, and a sub-hospital assistant, but does not include an officer :

(7) ‘superior

*(Section 4.)*

(7) 'superior officer,' when used in relation to a person subject to these Articles, includes a warrant officer, a non-commissioned officer and an acting non-commissioned officer :

(8) 'soldier' includes a non-commissioned officer and any armed person doing duty in the ranks of Her Majesty's Indian Forces:

(9) 'recruit' means a person enlisted for enrolment in any corps or department as a soldier :

(10) 'corps' means a unit of command, such as a regiment of cavalry, a regiment or battalion of infantry, a battery of artillery, and any other separate body of troops which is declared by the Governor General in Council by general or special order to be a corps for the purposes of these Articles; it also includes an army hospital corps and a transport corps :

(11) 'department' includes any division or branch of a department :

(12) 'military reward' means any gratuity or annuity for long service or good conduct; it also includes any good-conduct pay or pension and any other pecuniary reward:

(13) 'enemy' includes all armed mutineers, armed rebels, armed rioters and pirates:

(14) 'active service,' as applied to a person subject to these Articles, means the time during which such person is attached to or forms part of a force which is engaged in operations against an enemy, or is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country :

(15) the expression 'India' means British India, together with any territories of any Prince or Chief under the suzerainty of Her Majesty exercised through the Governor General in Council or through any Governor in Council or other officer subordinate

to

*(Section 4.)*

to the Governor General in Council: and the expression 'British India' means all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor General in Council or through any Governor in Council or other officer subordinate to the Governor General in Council:

(16) the expression 'general officer of the Command' means the general officer commanding the forces in a Command: and the expression 'Command' means one of the principal portions into which the army of India is, for the time being, divided:

(17) 'commanding officer,' when used in any provision of these Articles with reference to any separate portion of Her Majesty's forces or to any department, means the British officer whose duty it is under the Army Regulations, India, or, in the absence of any such Regulation, by the custom of the service, to discharge with respect to that portion of the forces or that department the functions of commanding officer in regard to matters of the description referred to in that provision:

(18) 'military custody' means the arrest or confinement of a person, according to the usages of the service:

(19) 'court-martial' means a court-martial held under these Articles:

(20) 'criminal court' means a court of ordinary criminal justice in British India, or established or continued elsewhere by the authority of the Governor General in Council:

(21) 'civil offence' means an offence which if committed in British India would be triable by a criminal court:

(22) 'offence' means any act or omission punishable under these Articles and includes a civil offence as hereinbefore defined: and

(23) expressions



(23) expressions occurring in the Indian Penal Code and used in these Articles and not herein otherwise defined shall have the meanings respectively assigned to them by that Code."

5. For Part I, clause (f), of the said Articles the following shall be substituted, namely :

Substitution  
of new clause  
for clause (f)  
of Part I.

"(f).—*Saving of certain Regulations.*

"Nothing in these Articles shall affect any regulations by which the respective offices and powers of cantonment magistrates and officers in charge of the police in cantonments are defined and controlled."

6. For Part II, Title I, of the said Articles the following shall be substituted, namely :

Substitution  
of new title  
for Title I of  
Part II.

"TITLE I.—ENROLMENT, ATTESTATION, DISMISSAL  
AND DISCHARGE.

"*Article 1.*—(1) The Governor General in Council may, by notification, declare what persons or classes of persons shall be enrolled only, or be both enrolled and attested, respectively.

Enrolment  
and attest-  
ation.

(2) A person shall be deemed to be enrolled under these Articles when his name has, with his consent, been entered in the prescribed manner on the list of a corps or department of Her Majesty's Indian Forces.

Mode of en-  
rolment.

(3) Subject to the provisions of this article with respect to recruits, every person to be attested under these Articles shall be taken before the prescribed civil or military officer, and that officer shall read and explain to him, or cause to be read and explained to him in his presence, the questions set forth in the prescribed form of attestation, and such other matters (if any) as may be prescribed; and, after having cautioned him that if he makes a false answer to any question set forth in the attestation form he will be liable to be punished as provided by these Articles, shall record the answer to each question, and shall, if he is satisfied that the person fully understands the questions,

Mode of  
attestation.

## (Section 6.)

questions, and that the answer has been correctly recorded opposite each question, and if he perceives no impediment, administer to the person an affirmation or oath in the prescribed form.

(4) The form of affirmation or oath prescribed under this Article shall contain a promise that the person to be attested will be faithful to Her Majesty, Her heirs and successors, and that he will serve in Her Majesty's Indian Forces and go wherever he is ordered by land or sea, and that he will obey all commands of any officer set over him, even to the peril of his life.

(5) When a recruit is reported fit for duty, an affirmation or oath in the same form shall be administered to him in the prescribed manner by the commanding officer in front of the corps or such portion thereof or such members of the department as shall be present.

(6) After administering the affirmation or oath, the officer shall authenticate the attestation paper by his signature, and the person shall then be deemed to have been attested.

Treatment of enrolment and attestation as of same effect in certain cases.

(7) Subject to any rules which may be prescribed, the Commander-in-Chief in India, or the general officer of the Command, may direct that any persons to whom these Articles apply as attested persons shall, for the purposes of these Articles, be deemed to be enrolled, and that any persons to whom these Articles apply as enrolled persons shall, for the purposes of these Articles, be deemed to be attested.

Rank and subordination.

"Article 2.—(1) Subject to the provisions of the Army Act, the Governor General in Council may, by notification, direct that persons of any class subject to these Articles shall, for any of the purposes of these Articles, be deemed to be Native officers, warrant officers or non-commissioned officers ; and,

44 & 45 V  
a 58.

(2) Subject as aforesaid, any prescribed authority may issue an order giving a like direction with respect to any such person.

(3) Any

## (Section 6.)

(3) Any notification or order issued under this article may be cancelled by the authority issuing the same; and,

(4) Subject as aforesaid, any person of the said classes with respect to whom no such notification or order is in force shall, so far as may be, be deemed for all the purposes of these Articles to be of a rank inferior to that of a non-commissioned officer.

(5) Should any question arise as to the rank of any other person subject to these Articles, or as to whether any such person is above or below a specified rank, the decision of the Governor General in Council thereon shall be conclusive.

(6) Every person subject to these Articles shall, for the purposes thereof, be deemed to be under the commanding officer of the corps or department (if any) to which he is attached, and, if not attached to any corps or department, under any officer who may for the time being be named as his commanding officer by the general or other officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the said general or other officer commanding:

Provided that a general or other officer commanding shall not place any person under an officer of official rank inferior to that of such person if there is present at the place where such person is any officer of higher rank under whom he can be placed.

"Article 3.—(1) Every Native officer shall be liable to dismissal from the service by the sentence of a general court-martial, and to dismissal or discharge by order of the Governor General in Council, or of the Commander-in-Chief in India, or of the general officer of the Command to which he belongs.

Dismissal  
and discharge  
of commis-  
sioned officers.

(2) A Native officer dismissed under these Articles shall forfeit all claim to pension.

"Article 4.—(1) Every person subject to these Articles,

Dismissal  
and discharge  
of other per-  
sons.

## (Section 6.)

Articles, other than a Native officer, shall be liable to—

- (a) dismissal from the service by the sentence of any court-martial empowered to try him, and
- (b) dismissal or discharge from the service, by order of the Governor General in Council, or of the Commander-in Chief in India, or of the general officer of the Command to which he belongs, or of the officer commanding the division or district in which he is serving, or if he belongs to a force not attached to a command, by order of the officer commanding such force.

(2) Every person so dismissed shall forfeit all claim to pension.

Attested person dismissed or discharged and re-enlisting or making false answer at his attestation.

“Article 5.—(1) Every attested person of or below the rank of non-commissioned officer who has been dismissed or discharged from the service, and who subsequently re-enters the service without at the time stating the fact of his dismissal or discharge, or showing his certificate of dismissal or discharge, may be dismissed the service by the officer commanding the corps or department with which he is serving ; and

(2) Every attested person of or below the rank of non-commissioned officer who is discovered to have made a wilfully false answer to any question set forth in the attestation paper which has been put to him by, or by direction of, the officer before whom he appears for the purpose of being attested, shall, on conviction by court-martial, be liable to suffer imprisonment (with hard labour and with or without solitary confinement) or such less punishment as is in these Articles mentioned.

Certificate to person dismissed or discharged.

“Article 6.—Every attested person who is dismissed or discharged from the service shall be furnished by his commanding officer with a certificate, in the English



## (Sections 7-11.)

English language and in the mother-tongue of such person (when his mother-tongue is not English), setting forth—

- (a) the authority dismissing or discharging him;
- (b) the cause of his dismissal or discharge; and
- (c) the full period of his service in the army."

7. In article 7, sentence I, of the said Articles, the words "in any regiment, corps, detachment or guard" are hereby repealed. Repeal of portion of article 7.

8. For the third sentence of the last-mentioned article the following shall be substituted, namely : Substitution of new sentence for third sentence of same article.

"or who, knowing or having reason to believe in the existence of any mutiny or sedition, or of any intention to mutiny or create sedition, or of any conspiracy against the State."

9. In article 8 of the said Articles, for the words "under any circumstances in which the superior officer is distinguishable as such in any manner" the words "knowing or having reason to believe him to be such" shall be substituted. Amendment of article 8.

10. For articles 10 and 11 of the said Articles the following shall be substituted, namely : Substitution of new articles for articles 10 and 11.

*"Desertion.*

"Article 10.—Who deserts or attempts to desert the service ;—or

" *Re-enlistment without having been discharged.*

"Article 11.—Who, without having first obtained a regular discharge from the corps or department to which he belongs, enlists or enrolls himself in any other corps or department ;—or"

11. For the last paragraph of article 24 of the said Articles the following shall be substituted, namely: Amendment of article 24.

"Whenever any person is convicted of an offence specified in article 7 and punishable with death under

this

(Sections 12-15.)

this article, all his property, moveable and immoveable, shall be forfeited to the Government."

Substitution  
of new  
articles for  
articles 25  
and 26.

12. For articles 25 and 26 of the said Articles the following shall be substituted, namely :

*" Unbecoming behaviour.*

*"Article 25.*—Any officer, medical subordinate or warrant officer who behaves in a manner unbecoming his position and character ;—and any person subject to these Articles—

*" Intoxication on duty.*

*"Article 26.*—Who is in a state of intoxication when on or after having been warned for any duty, or on parade, or on the line of march ;—or"

Substitution  
of new  
article for  
article 31.

13. For article 31 of the said Articles the following shall be substituted, namely:

*" Failure to rejoin.*

*"Article 31.*—Who, being on leave of absence and having received information from proper authority that his corps or department has been ordered on service, fails, without sufficient cause, to rejoin without delay ;—or "

Substitution  
of new  
article for  
article 39.

14. For article 39 of the said Articles the following shall be substituted, namely:

*"Impeding Provost-marshal.*

*"Article 39.*—Who impedes a provost-marshal or an assistant provost-marshal, or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of a provost-marshal or, when called on, refuses to assist, in the execution of his duty, the provost-marshal, assistant provost-marshal or any such officer, non-commissioned officer or other person ;—or"

Amendment  
of article 40.

15. In article 40 of the said Articles the words  
"enrolled

## (Sections 16-17.)

"enrolled or" shall be inserted between the word "person" and the word "attested."

16. For article 47 of the said Articles the following shall be substituted, namely :

Substitution  
of new article  
for article 47.

" *Making away with regimental necessities.*

"Article 47.—Who—

- (a) designedly or through neglect kills, injures, makes away with or loses his horse or ill-treats any animal used in the public service ;—or
- (b) dishonestly or fraudulently removes, conceals or delivers to any person, or designedly or through neglect injures or loses his arms, clothes, tools, musical or surgical instruments, equipments, ammunition, accoutrements or regimental necessities, or any such articles entrusted to him or belonging to any other person ;—or
- (c) sells, pawns, destroys or defaces any medal or decoration granted to him by order of Her Majesty or of the Governor General in Council for service in the field or for general good conduct ;—or"

17. For article 57 of the said Articles the following shall be substituted, namely:

Substitution  
of new  
article for  
article 57.

"*Punishment for offences mentioned in articles 54, 55 and 56.*

"Article 57.—Shall, if convicted by a general court-martial, be sentenced to be dismissed the service and to forfeit any arrears of pay and allowances due to him at the time of dismissal, and shall be punishable also with imprisonment (with or without hard labour, and with or without solitary confinement, for a term which may extend to two years; and shall, if convicted by a district court-martial, be liable to  
any

## (Sections 18-22.)

any or all of the penalties which such court is competent to inflict."

Amendment of article 65. 18. In article 65 of the said Articles the word "other" shall be omitted.

Substitution of new article for article 66. 19. For article 66 of the said Articles the following shall be substituted, namely:

*"Penalties for offences specified in articles 58 to 65.*

*"Article 66.—*Shall, on conviction by a general or district court-martial, be liable to any or all of the punishments, other than death or transportation, which the court-martial is competent to award."

Amendment of article 69. 20. In article 69 of the said Articles, for the words "such punishments as" to the end, the words "any or all of the punishments, other than death or transportation, which the court-martial is competent to award" shall be substituted.

Substitution of new article for article 71. 21. For article 71 of the said Articles the following shall be substituted, namely:

*"Abetment.*

*"Article 71.—*Every person who abets, within the meaning of the Indian Penal Code, any offence punishable under these Articles may be punished with the punishment hereinbefore provided in these Articles for such offence." XLV. 1860.

Substitution of new article for article 72. 22. For article 72 of the said Articles the following shall be substituted, namely:

*"Article 72.—*For the purposes of these Articles, there shall be five kinds of courts-martial, that is to say—

- |                                     |   |
|-------------------------------------|---|
| (1) General courts-martial.         | } Hereinafter called ordinary courts-martial.       |
| (2) District courts-martial.        |   |
| (3) Regimental courts-martial.      |   |
| (4) Summary general courts-martial. | } Hereinafter called extraordinary courts-martial." |
| (5) Summary courts-martial.         |   |

23. For



## (Sections 23-25.)

23. For articles 73 and 74 of the said Articles the following shall be substituted, namely :

Substitution  
of new arti-  
cles for  
articles 73  
and 74.

*“ Ordinary Courts-martial.*

*“ Article 73.—(1)* The following authorities shall have power to convene general or district courts-martial, namely :

Power to  
convene  
ordinary  
courts-mar-  
tial.

- (a) the Commander-in-Chief in India,
- (b) the general officer of the Command,
- (c) any officer empowered in that behalf by war-  
rant of the Commander-in-Chief in India  
or the general officer of the Command.

(2) The power of convening general or district courts-martial may be granted under clause (1), sub-clause (c), subject to such restrictions, reservations, exceptions and conditions as the Commander-in-Chief in India or the general officer of the Command granting the power may think fit.

(3) Any warrant under this article for convening general or district courts-martial, or either of them, may be addressed to an officer by name, or by designation of his office, or partly in one way and partly in the other, and may or may not, according to the terms thereof and the mode in which it is addressed, be limited to an officer named or be extended to any person for the time being performing the duties of such officer, or to the successors in command of such officer.

*“ Article 74.—A* general court-martial shall, if held in British India, consist of not less than seven officers, unless that number, due regard being had to the public service, is not available, in which case the court may consist of not less than five officers.”

Composition  
of general  
courts-mar-  
tial.

24. Articles 75, 77, 78 and 79 of the said Articles are hereby repealed.

Repeal of  
articles 75,  
77, 78 and  
79.

25. In article 76 of the said Articles, for the words “reduction to the ranks” the words “re-  
duction

Amendment  
of article 76.

duction to a lower grade or to the ranks " shall be substituted.

Substitution  
of new arti-  
cles for arti-  
cles 80 and  
81.

Composition  
of district  
court-martial.

26. For articles 80 and 81 of the said Articles the following shall be substituted, namely:

"*Article 80.*—A district court-martial shall consist of not less than five officers, unless that number, due regard being had to the public service, is not available, in which case the court may consist of not less than three officers.

"*Article 81.*—A district court-martial may, when necessary, be composed wholly of officers of the corps or department to which the accused belongs."

Amendment  
of article 82.

27. In article 82 of the said Articles the words "or garrison" and the words "other than mutiny" shall be omitted.

Further  
amendment  
of same arti-  
cle.

28. In the last-mentioned article, for the words "one year" the words "two years" and for the words "reduction to the ranks" the words "reduction to a lower grade or to the ranks" shall be respectively substituted.

Insertion of  
new article  
after article  
82.

29. After article 82 of the said Articles the following article shall be inserted, namely :

Convening  
order to state  
if larger  
number of  
officers is not  
available.

"*Article 82A.*—Whenever a general or district court-martial is ordered to be composed of the smaller number of officers specified in article 74 or 80, the order convening the court shall expressly state that the larger number of officers is not, due regard being had to the public service, available; and that statement shall be conclusive evidence of the fact so stated."

Substitution  
of new arti-  
cles for arti-  
cles 83, 84  
and 85.

30. For articles 83, 84 and 85 of the said Articles the following shall be substituted, namely:

Appointment  
of regimental  
court-martial.

"*Article 83.*—A regimental court-martial may be appointed by the officer commanding any corps or department

## (Section 31.)

department or detachment thereof or by any officer when in command of two or more corps or departments or detachments thereof.

"Article 84.—A regimental court-martial shall consist of not less than three officers.

Composition of regimental court-martial.

"Article 85.—A regimental court-martial shall have power to try all persons subject to these Articles and not above the rank of non-commissioned officer—

Powers of such court.

- (a) for any offence triable by a court-martial under these Articles, except an offence punishable under articles 7 to 23 (both inclusive), articles 54 to 65 (both inclusive), or articles 171 to 173 (both inclusive), and,

- (b) with the previous sanction of the prescribed authority, for any of the offences so excepted.

"Article 85A.—A regimental court-martial shall have power to pass any sentence which might have been passed by a district court-martial for the like offence other than suspension from rank, pay and allowances :

Powers as to sentences of such courts

Provided that no sentence of imprisonment for a term exceeding six months, nor any of the additional punishments specified in article 135, shall be passed by a regimental court-martial."

31. For articles 86 to 89 (both inclusive) of the said Articles the following shall be substituted, namely:

Substitution of new articles for articles 86 to 89.

"Article 86.—(1) The officers composing a court-martial convened under the foregoing provisions shall, except as hereinafter provided, be Native officers.

Native and British officers when to be nominated.

(2) The Governor General in Council, or the Commander-in-Chief in India, or the general officer of the Command, or any officer empowered in that behalf by warrant of the Commander-in-Chief in India or the general officer of the Command, may direct that any court-martial convened under these Articles shall be composed of British instead of Native officers.

(3) Any

## (Section 31.)

(3) Any person subject to these Articles, who is under orders for trial by any court-martial, may claim to be tried by British officers.

(4) In all cases the right of making such a claim shall, before the court is convened, be explained to the person under orders for trial by the commanding officer, or some officer deputed by him in this behalf, and, when such a claim is made, the court shall be constituted accordingly.

(5) A court-martial convened for the trial of any person subject to these Articles, and serving with any British corps or detachment, may be composed of British officers if, in the opinion of the officer convening the court (such opinion to be expressed in the order convening the court and to be conclusive), Native officers are not available with due regard to the public service for service on the court.

Judge advocate and appointment of superintending officer for native court-martial.

“Article 87.—(1) Every general court-martial shall be attended by a judge advocate.

(2) If no officer of the judge advocate general's department is available, the officer convening the court shall appoint a fit person to act as judge advocate at the trial.

(3) No person under orders for trial or under trial by any court-martial may, without the leave of the court, object to any person acting or professing to act as judge advocate.

(4) A British officer of not less than four years' service, hereinafter called the superintending officer, shall be appointed to superintend the proceedings of every court-martial composed of Native officers which is not attended by a judge advocate.

President.

“Article 88.—(1) At every court-martial the senior officer shall sit as president without special appointment as such.

(2) In case of the death or unavoidable absence of the president, the next senior officer shall take the place of the president, without special appointment as such



## (Section 31.)

such, and the trial shall proceed if the court is still composed of not less than the smallest number of officers of which it is required by these Articles to consist.

“*Article 89.*—No finding or sentence of a general, district or regimental court-martial shall be valid, except so far as it may be confirmed as provided by these Articles. Finding and sentence invalid without confirmation.

“*Article 89A.*—(1) The following authorities shall have power to confirm the findings and sentences of general and district courts-martial : By whom findings and sentences may be confirmed or otherwise disposed of.

- (a) the Commander-in-Chief in India;
- (b) the general officer of the Command, as regards troops under his command wherever stationed;
- (c) the officer commanding a force not attached to a Command ;
- (d) any officer empowered in that behalf by warrant of the Commander-in-Chief in India or the general officer of the Command:

Provided that, except on active service or beyond the limits of India, no warrant issued under this article shall be deemed to empower an officer to confirm any finding or sentence in the case of an officer, medical subordinate or warrant officer, or a sentence of death, transportation or imprisonment for a term exceeding seven years in any case whatever.

(2) The provisions of article 73, clauses (2) and (3), shall, with the necessary modifications, apply to warrants issued under this article.

(3) The officer who convenes a regimental court-martial or the officer having authority to convene such court-martial, at the date of the submission of the finding and sentence thereof, shall have power to confirm the same.

“*Article*

## (Section 32.)

Power of confirming officer to mitigate, remit or commute sentence.

"Article 89B.—Subject to such restrictions as may be contained in any warrant issued under the last preceding article, the confirming officer may, when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any less punishment or punishments to which the offender might have been sentenced by the court-martial:

Provided that a sentence of transportation shall not be commuted to a sentence of imprisonment for a term exceeding the term of transportation awarded by the court."

Substitution of new articles for articles 90 to 97.

32. For articles 90 to 97 (both inclusive) of the said Articles the following shall be substituted, namely:

*"Extraordinary Courts-martial.*

Convening of summary general courts-martial.

"Article 90.—The following authorities shall have power to convene a summary general court-martial, and such a court-martial may be convened—

- (a) in any place, whether within or beyond British India, by an officer empowered in this behalf by an order of the Governor General in Council or of the Commander-in-Chief in India or of the general officer of the Command;
- (b) by an officer commanding any detached portion of Her Majesty's troops upon active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by an ordinary general court-martial.

Composition of summary general courts-martial.

"Article 91.—(1) A summary general court-martial shall consist of not less than three officers, who may be either British or Native, or both British and Native officers, as the officer convening the court thinks fit.

(2) Such

## (Section 32.)

(2) Such court may be convened and the proceedings thereof be recorded in accordance with the form in the Second Appendix to these Articles with such variations as the circumstances of each case may require:

Provided that the convening officer may, in respect of any such trial by such court, specially order the evidence, together with the prisoner's statement in defence, to be fully recorded in writing.

“Article 92.—A summary general court-martial shall have all the powers of a general court-martial, and, subject to any instructions contained in the order convening the court, its sentence shall be valid, and may be carried out forthwith in case it does not exceed that which a district court-martial is empowered to pass, and in any other case when confirmed by the authority convening the court.

Powers of a summary general court-martial.

“Article 93.—(1) A summary court-martial may be held—

Convening and constitution of, and persons triable by, a summary court-martial.

(a) by the commanding officer, being a combatant officer, of any corps or department of Her Majesty's Indian Forces, or of any detachment of those forces;

(b) by the commanding officer of any British corps or detachment to which Native combatant details subject to these Articles are attached.

(2) At every summary court-martial the officer holding the trial shall alone constitute the court, but the proceedings shall be attended throughout by two other officers, British or Native, who shall not, as such, be affirmed or sworn.

(3) The proceedings shall be recorded in the English language, and, when closed, shall be signed by the officer holding the trial, and by the officers attending thereat.

(4) A summary court-martial may try any person subject to these Articles and under the command of the

## (Section 32.)

the officer holding the court, except an officer, medical subordinate or warrant officer.

(5) Any member of an army hospital corps may be tried by summary court-martial by any officer authorised in this behalf by the officer commanding the division, district, brigade or station to which the alleged offender belongs.

Offences tri-  
able by a  
summary  
court-mar-  
tial.

"Article 94.—A summary court-martial may try any offence punishable under any of these Articles:

Provided that when there is no grave reason for immediate action, and reference can, without detriment to discipline, be made to superior authority, a summary court-martial shall not try without such reference any of the following offences, namely:

- (a) any offence punishable under any of the Articles 7 to 23 (both inclusive), or Articles 54 to 65 (both inclusive), or Article 171;
- (b) any offence against the officer holding the court.

Powers of a  
summary  
court-mar-  
tial.

"Article 95.—(1) A summary court-martial held by the commanding officer of a corps or department may pass any sentence which can be passed under these Articles, except a sentence of death or transportation, or of imprisonment for a term exceeding one year.

(2) A summary court-martial held by any other officer may pass any sentence which can be passed under these Articles, except a sentence of death or transportation, or of imprisonment for a term exceeding six months.

Finding and  
sentence of a  
summary  
court-mar-  
tial.

"Article 96.—The finding and sentence of a summary court-martial shall not require to be confirmed, but may be carried out at once :

Provided that, if the officer holding the trial is of less than five years' service, he shall not, except on active service, carry into effect any sentence until it has received the approval of a superior military officer commanding not less than a corps.

"Article



## (Sections 33-35.)

*“Article 97.—*The proceedings of every summary court-martial shall, without delay, be forwarded to the officer commanding the district, or the division or brigade, within which the trial was held, or to the prescribed officer: and such officer or the Commander-in-Chief in India or the general officer of the Command, or, when the court is held in a force not attached to a Command, the officer commanding the force, may, for reasons based on the merits of the case, but not on any merely technical grounds, set aside the proceedings.”

Transmission of proceedings of summary courts-martial.

33. For Article 100 of the said Articles the following shall be substituted, namely :

Substitution of new article for article 100.

*“Article 100.—(1)* Whenever any person subject to these Articles is accused of any offence which his commanding or other superior officer considers should be tried by court-martial, such officer shall order the accused to be placed in military custody until he can be tried by a court-martial or is discharged by proper authority.

Arrest or confinement of accused.

(2) No such person shall be detained in military custody longer than is necessary for the purposes of justice.”

34. Article 101 of the said Articles is hereby repealed.

Repeal of article 101.

35. For article 102 of the said Articles the following shall be substituted, namely:

Substitution of new article for article 102.

*“Article 102.—(1)* An interpreter shall be appointed to every court-martial.

Interpreter.

(2) If no duly qualified interpreter is available at the station or place where the court-martial sits, the officer appointing the court, or the officer commanding in the district or place within or at which the trial is to be held, shall appoint any competent person to perform the duty of interpreter.

(3) When

(Sections 36-38.)

(3) When no other qualified or competent person is available, the superintending officer, or, in the case of an European court, the president, shall perform the duty of interpreter.

(4) In the case of a trial by a summary court-martial, the officer holding the trial, or one of the officers in attendance thereat, may perform the duty of interpreter if no other competent interpreter is available.

(5) No interpreter shall, as such, have a vote upon any matter."

36. For article 103 of the said Articles the following shall be substituted, namely :

Substitution  
of new  
articles for  
article 103.

Dissolution  
of courts.

"*Article 103.*—(1) When a court-martial after the commencement of the trial is reduced below the smallest number of officers of which it is by these Articles required to consist, it shall be deemed to be dissolved.

(2) If, on account of the illness of the prisoner before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(3) Where a court-martial is dissolved under this article, the prisoner may be tried again.

Power to  
clear court.

"*Article 103A.*—The president of a court-martial may, on any deliberation among the members, cause the court to be cleared of all other persons.

Power to  
view place.

"*Article 103B.*—The court may, when it thinks fit, view any place."

Amendment  
of article  
104.

37. In article 104 of the said Articles the words "general court martial appointed under an Order in Council, or of any other" and the words and figures "under article 96 or 97" shall be omitted.

Amendment  
of article  
107.

38. In Article 107 of the said Articles, for the words "courts-martial, other than courts-martial appointed under an Order in Council, or summary" the word "ordinary" shall be substituted.

39. After

39. After article 108 of the said Articles the following article shall be inserted, namely:

Insertion of new article after article 108.

"Article 108A.—At a summary court-martial the interpreter shall make affirmation or oath down to the words 'published by authority' only."

Affirmation or oath of interpreter.

40. Article 114 of the said Articles is hereby repealed.

Repeal of article 114

41. For article 116 of the said Articles the following shall be substituted, namely:

Substitution of new article for article 116.

"Article 116.—(1) A prisoner charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

Conviction of one offence permissible on charge of another.

(2) A prisoner charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave.

(3) A prisoner charged before a court-martial with any one of the following offences, that is to say, theft, dishonest misappropriation or conversion, criminal breach of trust, or dishonestly receiving or retaining stolen property, may be found guilty of any other of those offences.

(4) A prisoner charged before a court-martial with any other offence under these Articles may, on failure of proof of an offence having been committed under circumstances involving a more severe punishment, be found guilty of the same offence as having been committed under circumstances involving a less severe punishment."

42. For article 117 of the said Articles the following shall be substituted, namely:

Substitution of new article for article 117.

"Article 117.—(1) When any person subject to these Articles has been convicted by a court-martial of any offence, such court-martial shall enquire into,

Evidence of previous convictions and general character.

and

## (Section 43.)

and receive and record evidence of, any previous convictions of such person, either by a court-martial or by a criminal court, and shall further enquire into and record the general character of such person.

(2) Evidence received under this article may be either oral, or in the shape of entries in, or certified extracts from, court-martial books or other official records; and it shall not be necessary to prove the signature to such certified extracts, nor shall it be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(3) At a summary court-martial the commanding officer holding the trial may, if he thinks fit, record any previous convictions against the offender and his general character, as of his own knowledge instead of requiring them to be proved under the foregoing provisions of this article.

General rule  
as to evi-  
dence.

"Article 117 A.—Subject to the provisions of the last foregoing article, the Indian Evidence Act, 1872, subject to such modifications thereof and to such additional rules of evidence as the Governor General in Council may, by notification, direct, shall apply to all proceedings before a court-martial."

I of 18

Substitution  
of new  
articles for  
articles 119  
and 120.

43. For articles 119 and 120 of the said Articles the following shall be substituted, namely:

Majority  
requisite to  
sentence of  
death.

"Article 119.—No sentence of death shall be passed by any court-martial without the concurrence of two-thirds at the least of the members of the court.

Revision of  
finding or  
sentence.

"Article 120.—(1) The finding or sentence of any court-martial may be once revised by order of the officer authorized to dispose of the proceedings, and, on such revision, the court, if so directed by him, may take additional evidence.

(2) The court, on revision, shall consist of the same officers as were present when the original decision



## (Section 44.)

sion was passed, unless any of those officers shall be unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided it still consists of the smallest number of officers of which such court is by these Articles required to consist."

44. For articles 122 to 124 (both inclusive) of the said Articles the following shall be substituted, namely :

Substitution  
of new  
articles for  
articles 122  
to 124.

"Article 122.—(1) The judge advocate in the case of a general court-martial, and the officer ordering the trial in the case of any other court-martial, may, by summons under his hand, require the attendance before the court, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

Summoning  
witnesses and  
production of  
documents.

(2) In the case of a witness amenable to military authority, the summons shall be sent to the officer actually commanding the corps, department or detachment to which he belongs, and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with convenient certainty.

(5) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to any letter, post-card, telegram or other document in the custody of the postal or telegraph authorities.

(6) If

## (Section 44)

(6) If any document in such custody is, in the opinion of any district magistrate, chief presidency magistrate, high court or court of session, wanted for the purposes of any court-martial, such magistrate or court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate or court may direct.

(7) If any such document is, in the opinion of any other magistrate or of any commissioner of police, or district superintendent of police, wanted for any such purpose, he may require the postal or telegraph department, as the case may be, to cause search to be made for and to detain such document pending the orders of any such district magistrate, chief presidency magistrate or court.

Contempts of  
court.

"Article 123.—(1) Any witness duly summoned, and any person who commits any contempt of court in the presence of a court-martial, or any offence described in article 56, 67 or 68, shall, if subject to these Articles, be proceeded against as the court may direct.

(2) If any such witness or person is not so subject, the president of the court-martial may certify the offence under his hand to the court of any magistrate within the local limits of whose jurisdiction it was committed, and the magistrate may thereupon take cognizance of the case, and after hearing anything which the accused may desire to say, dispose of it as if the offence had been committed in a proceeding in the court of such magistrate.

Privileges of  
persons  
attending  
courts-  
martial.

"Article 124.—(1) No president or member of a court-martial, no judge-advocate or superintending officer, no party to any proceeding before a court-martial or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial, shall, while proceeding to, attending on or returning from, a court-martial, be liable to arrest under civil or revenue process.

(2) If any such person is arrested under any such process,

## (Sections 45-49.)

process, he may be discharged by order of the court-martial."

45. Articles 125 to 129 (both inclusive) of the said Articles are hereby repealed.

Repeal of articles 125 to 129. Amendment of a article 130.

46. In article 130, clause (d), sentence 1, of the said Articles, for the words "one year" the words "two years" shall be substituted.

47. For article 131 of the said Articles the following shall be substituted, namely :

Substitution of new article for article 131.

"Article 131.—Dismissal from the service may accompany any other sentence passed by a court-martial."

Dismissal.

48. In article 132 of the said Articles, after the word "reduced" the words "to a lower grade or" shall be inserted.

Insertion of words in article 132.

49. For articles 133 to 137 (both inclusive) of the said Articles the following shall be substituted, namely:

Substitution of new articles for articles 133 to 137.

"Article 133.—In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and, when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Solitary confinement.

"Article 134.—A non-commissioned officer sentenced by court-martial to any of the punishments specified in the second paragraph of article 132 shall be deemed to be reduced to the ranks.

Reduction of non-commissioned officers to ranks.

"Article 135.—On a conviction of any offence, a general, summary general or district court-martial may, in addition to any other punishment which it is empowered to award, sentence the offender to

Forfeiture of pay and pension.

forfeit.

forfeit all advantage as to additional pay and claim to pension on discharge which might otherwise have accrued from the length or nature of his former service, or to forfeit all such advantage absolutely, whether it has accrued from former service or may accrue from future service, or to forfeit service for the purpose of promotion, increased pay or pension or any other prescribed purpose, or to forfeit any military decoration or reward.

Stoppage of  
good-conduct  
pay on  
conviction.

"Article 136.—Whenever a person subject to these Articles is convicted by a court-martial, his good-conduct pay shall, subject to any rules or orders which may from time to time be made with the previous sanction of the Governor General in council, cease.

Forfeiture of  
arrears of  
pay.

"Article 137.—On a conviction for any offence, if the offender is sentenced to dismissal from the service, or if his sentence involves such dismissal, he may further be sentenced to forfeit, if the court shall so direct,—

(a) all or any arrears of pay and allowances or other public money due to him at the time of his dismissal, or

(b) such portion thereof as may be required to make good any proved loss or damage arising out of his offence."

Amendment  
of article 138.

50. The first paragraph of article 138 of the said Articles, and the word "and" at the beginning of the second paragraph of the same article, are hereby repealed.

Amendment  
of article 139.

51. In Article 139 of the said Articles, for the words "in the case of an officer, two-thirds, or in the case of any other person, one-half of his" the words "one-half of the offender's" shall be substituted.

Repeal of  
articles 142  
to 149.

52. Articles 142 to 149 (both inclusive) of the said Articles are hereby repealed.

Amendment  
of articles  
150 and 151.

53. In articles 150 and 151 of the said Articles,  
after



after the words "the offender shall" the words "as soon as may be convenient" shall be inserted, and for the words "the nearest jail" the words "a jail" shall be substituted.

54. To the last-named article the following proviso shall be added, namely : Addition to article 151.

"Provided that in the case of a sentence of such imprisonment for a period not exceeding three months, the confirming or superior authority or, in the case of a summary court-martial, the commanding officer holding the trial may direct that the sentence shall be undergone in military custody."

55. To article 152 of the said Articles the words "Subject to the control of the Commander-in-Chief in India" shall be prefixed; and for the words "the Commander-in-Chief of a Presidency" the following words shall be substituted, namely: "the general officer of the Command." Amendment of article 152.

56. To the second paragraph of the last-mentioned article the words "Subject as aforesaid" shall be prefixed, and in the same paragraph for the words "any Presidency" the words "a Command" shall be substituted. Further amendment of same article.

57. In article 155 of the said Articles, after the words "from the date of such sentence" the words "or, if an appeal be preferred against such sentence and fail, from the date of the disposal of such appeal," shall be inserted. Insertion of new words in article 155.

58. To the last-mentioned article the following shall be added, namely: Addition to same article.

"Provided that on active service any such person may, by order of the officer empowered under these Articles to confirm or otherwise dispose of the proceedings of the trial, be retained to serve in the ranks, and his service therein shall be reckoned as part of his term of transportation or imprisonment."

59. Articles 156 to 159 (both inclusive) of the said Articles are hereby repealed. Repeal of articles 156 to 159.

60. For

Substitution  
of new article  
for article  
160.

Pardons and  
remissions.

60. For article 160 of the said Articles the following shall be substituted, namely :

*“Article 160.—*When any person subject to these Articles has been convicted by a court-martial of any offence,—

(a) the Governor General in Council, or,

(b) when the person has been convicted of any offence other than a civil offence, the Commander-in-Chief in India or the general officer of the Command,

may—

(1) pardon the person ;

(2) remit wholly or in part any punishment awarded to him ;

(3) order the restoration to him of any service or other advantage forfeited under his sentence, or

(4) re-admit him to the service when he has been dismissed therefrom :

Provided that the general officer of the Command shall not exercise the powers conferred by this section in respect of any person, unless—

(1) the person was under his authority when sentenced ; and

(2) the person is still in the service, or, if the person has been dismissed from the service, the corps or department from which he was dismissed has since continued under the authority of that officer.”

Amendment  
of Article  
16

61. In article 161 of the said Articles the words “or to the Government of Fort St. George, or to the Government of Bombay,” shall be repealed; and for the words “Commander-in Chief of any Presidency or of the officer commanding any force not attached to a Presidency” the following words shall be substituted, namely: “Commander-in-Chief in India or the

## (Sections 62-63.)

the general officer of the Command, or of the officer commanding any force not attached to a Command."

62. After article 161 of the said Articles the following shall be inserted, namely:

Addition of new article after article 161.

*"Preservation of Proceedings.*

"Article 161A.—(1) The proceedings of all general courts-martial shall be preserved by the judge advocate general for not less than seven years, and the proceedings of summary general courts-martial and district courts-martial for not less than three years, from the date of the confirmation of the finding and sentence.

Preservation of proceedings of courts-martial.

(2) The proceedings of regimental and summary courts-martial shall be preserved for three years with the records of the corps or department to which the prisoner belonged.

(3) Every person tried by a court-martial shall be entitled, on demand at any time after the confirmation of the finding and sentence where such confirmation is required, and before the proceedings are destroyed, to obtain from the officer or person having the custody of the proceedings a copy thereof, including the proceedings upon revision, if any, upon payment for the same at the prescribed rate."

63. For article 162 of the said Articles the following shall be substituted, namely:

Substitution of new article for article 162.

"Article 162.—(1) When any person subject to these Articles has been absent without due authority from his duty for a period of sixty days, a court of enquiry shall, as soon as practicable, be assembled, and, upon affirmation or oath administered in the prescribed manner, shall enquire respecting the absence of the person, and the deficiency, if any, of property of the Government entrusted to his care, or of his arms, ammunition, equipments, instruments,

Enquiry on absence of person subject to Articles.

clothing

(Sections 64-65.)

clothing or necessities; and, if satisfied of the fact of such absence without due authority or other sufficient cause, the Court shall declare such absence and the period thereof, and the said deficiency, if any; and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender, or is not apprehended, the record shall have the legal effect of a conviction of desertion.

(3) If the person declared absent surrenders or is apprehended, the record or a copy thereof purporting to bear the signature of the officer having the custody of the court-martial book shall, on the trial of the person for desertion, be presumptive evidence of the facts therein recorded; and, on proof of the identity of the prisoner with the person therein mentioned, he may be found guilty of desertion and of the deficiency, if any, therein recorded."

Amendment  
of article  
163.

64. For the last paragraph of article 163 of the said Articles the following shall be substituted, namely:

"Such recommendation, duly confirmed by the Commander-in-Chief in India, or by the general officer of the Command, or the officer commanding any force not attached to a command to which he belongs, or by any general officer under whose command the person is serving, shall entitle him to receive such arrears and reckon service accordingly."

Substitution  
of new  
article for  
article 164.

65. For article 164 of the said Articles the following shall be substituted, namely:

Reduction to  
lower grade  
or ranks.

"Article 164.—The Commander-in-Chief in India, the general officer of the Command, the officer commanding any force not attached to a command, and the officer commanding any district or division or brigade,



brigade, shall respectively have power to reduce to a lower grade or to the ranks any non-commissioned officer under his command."

66. In article 165 of the said Articles, for the words "No such minor punishment shall be awarded by a court-martial," to the end of the article, the following shall be substituted, namely:—

Amendment  
of article  
165.

"Unless otherwise specially provided by the said Commander-in-Chief, no Native officer, medical subordinate or warrant officer shall be liable to any such minor punishment.

"Good-conduct pay shall not necessarily be forfeited on the infliction of a minor punishment, but forfeiture thereof may be awarded as a substantive punishment, by order of the commanding officer, as may from time to time be prescribed in the General Orders of the Commander-in-Chief in India.

"Forfeiture of good-conduct pay may be awarded in addition to any other minor punishment."

67. In article 166 of the said Articles, the words "the Governor of Fort St. George in Council, the Governor of Bombay in Council, or any other Local Government" shall be omitted.

Amendment  
of article  
166.

68. In article 168 of the said Articles, for the words "the Commander-in-Chief of the Presidency" the words "the Commander-in-Chief in India or the general officer of the Command" shall be substituted.

Amendment  
of article  
168.

69. In the second paragraph of article 169 of the said Articles, for the words "warrant officer" the words "non-commissioned officer" shall be substituted.

Amendment  
of article  
169.

70. The second and third paragraphs of article 170 of the said Articles are hereby repealed.

Repeal of  
part of  
article 170

71. For articles 171 to 175 (both inclusive) of the said Articles the following shall be substituted, namely:

Substitution  
of new  
articles for  
articles 171  
to 175.

"Civil

## (Section 71.)

## “ Civil offences.

Military  
jurisdiction  
with respect  
to civil  
offences.

“*Article 171.*—Every person subject to these Articles who at any place beyond British India commits any civil offence shall be deemed to be guilty of an offence against military law, and if charged therewith under this article shall, subject to the provisions of these Articles, be liable to be tried for the same by court-martial at any place, whether within or beyond British India, and on conviction to be punished as follows, that is to say :

(a) if the offence is one which would be punishable under the law of British India with death or with transportation, or with imprisonment for a term exceeding three years, he shall be liable to suffer any punishment assigned for the offence by the law of British India; and

(b) in other cases, he shall be liable to suffer any punishment assigned for the offence by the law of British India or such punishment as might be awarded to him in pursuance of these Articles in respect of an act to the prejudice of good order and military discipline.

Extension of  
article 171  
to certain  
civil offences.

“*Article 172.*—The Governor General in Council may, by notification, extend the last foregoing article to civil offences or any class of those offences committed by a person subject to these Articles when on active service in British India, and may cancel any such notification.

Certain  
offences  
when triable  
by military  
law.

“*Article 173.*—Every person subject to these Articles who, whether within or beyond British India, commits or attempts to commit or abets the commission of any of the following offences against any person subject to military law, that is to say, murder, culpable homicide or any offence punishable under any of the sections 323 to 335 (both inclusive) or section 506 of the Indian Penal Code, shall be deemed

XLV of

## (Section 72.)

deemed to be guilty of an offence against military law, and if charged under this article with any such offence shall, subject to the provisions of these Articles, be liable to be tried by court-martial at any place whether within or without British India, and on conviction shall be liable to suffer any punishment assigned for the offence by the said Code.

“*Article 174.*—When under any of the foregoing Articles a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the prescribed military authority to decide before which court the proceedings shall be instituted, and, if that authority decides that they shall be instituted before a court-martial, to direct that the accused person shall be detained in military custody.

Jurisdiction  
over certain  
offences.

“*Article 175.*—(1) When a criminal court having jurisdiction is of opinion that proceedings ought to be instituted before itself in respect of any alleged offence, it may, by written notice, require the convening authority or the prescribed military authority at his option either to deliver over the offender to the nearest magistrate to be proceeded against according to law or to postpone proceedings pending a reference to the Governor General in Council.

Power of  
criminal  
court to  
require  
delivery of  
offender.

(2) In every such case the said authority shall either deliver over the offender in compliance with the requisition or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Governor General in Council, whose order upon such reference shall be final.”

72. For articles 176 to 179 (both inclusive) of the said Articles the following shall be substituted, namely:

Substitution  
of new  
articles for  
articles 176  
to 179.

“TITLE VI.—PROPERTY OF DECEASED PERSONS AND  
DESERTERS.

“*Article 176.*—The following rules are enacted  
respecting

Property of  
deceased  
persons,

*(Section 72.)*

deserters and  
lunatics.

respecting the disposal of the property of every person who belongs to a class subject to these Articles who dies, is killed in the field or deserts:—

(1) The commanding officer shall secure all the moveable property that is on the spot, and cause an inventory thereof to be made, and draw any pay and allowances due to the deceased or deserter.

(2) In the case of a deceased person who has left in a Government Savings Bank (including any Post Office Savings Bank, however named), a deposit not exceeding one thousand rupees, the commanding officer may, if he thinks fit, require the secretary or other proper officer of the bank to pay the deposit to him forthwith notwithstanding anything in any departmental rules; and, after the payment thereof in accordance with such requisition, no person shall have any right in respect of the deposit except as hereinafter provided.

(3) In the case of a deceased person whose representative is on the spot and has given security for the payment of the regimental debts (if any) of the deceased, the commanding officer shall deliver over the property and the amount of the deposit (if any) received under clause (2) of this article to that representative.

(4) In the case of a deceased person whose estate is not dealt with under clause (3) of this article, and in the case of any deserter, the commanding officer shall cause the property to be sold by public auction, and shall pay the regimental debts and other debts in camp or quarters (if any), and in the case of a deceased person the expenses of his funeral ceremonies, from the proceeds of the sale and the amount of the deposit (if any) received under clause (2) of this article.

(5) The surplus, if any, shall in the case of a deceased person be paid to his representative, if any,  
or



## (Section 72.)

or in the event of no claim to such surplus being established within twelve months after the death, then the same shall be remitted to the prescribed officer.

(6) In the case of the sale of the effects of a deserter, the amount remaining in the hands of the commanding officer shall be forthwith remitted to the prescribed officer.

*Article 177.*—Property deliverable and money payable to the representative of a deceased person under the last foregoing article may, if the total value or amount thereof does not exceed one thousand rupees, and if the prescribed officer thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title; and such delivery or payment shall be a full discharge to those ordering or making the same and to the Secretary of State for India in Council from all further liability in respect of the property or money; but nothing in this article shall affect the rights of any executor or administrator or other representative, or of any creditor, of a deceased person against any person to whom such delivery or payment has been made.

Disposal of certain property without production of probate, etc.

*Article 178.*—A person shall be deemed to have deserted within the meaning of article 176 who has been convicted of desertion, or who has been illegally absent from duty for a period of sixty days and has not subsequently surrendered or been apprehended.

Meaning of desertion in article 176.

*Article 179.*—The provisions of the last-mentioned article shall, so far as they can be made applicable, apply in the case of a person subject to these Articles becoming insane, such allowance being made for his support as is authorised by the Military Lunatics Act, 1877."

Application of Article 176 to lunatics.

## (Section 73.)

Substitution  
of new Part  
for Part III

73. For Part III of the said Articles the following shall be substituted, namely :

“PART III.—MISCELLANEOUS.

Prohibition  
of second  
trial.

“Article 180.—When any person subject to these Articles has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been summarily dealt with for an offence under article 165 or 166, he shall not be liable to be again tried for the same offence by a court-martial or dealt with summarily in respect of it under either of the said Articles.

Exemption  
from arrest  
for debt.

“Article 181.—(1) No person subject to these Articles shall, so long as he belongs to Her Majesty's Indian Forces, be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue court or revenue-officer.

(2) The judge of any such court may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this article, and may by warrant under his hand discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no fee whatever shall be payable to the court by the complainant.

Property  
exempted  
from  
attachment.

“Article 182.—Neither the arms, clothes, equipment, accoutrements or necessities of any person subject to these Articles, nor any animal used by him for the discharge of his duty, shall be seized; nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue-officer, in satisfaction of any decree or order enforceable against him.

Application  
of the last  
two  
foregoing

“Article 183.—Every person belonging to the Indian Reserve Forces shall, when called out for or engaged

## (Section 73.)

engaged upon or returning from training or service, as an officer or soldier, be entitled to all the privileges accorded by the two last foregoing articles to a person subject to these Articles.

articles to  
reservists.

"Article 184.—(1) On the presentation to any court by or on behalf of any officer or soldier subject to these Articles of a certificate from the proper military authority, of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such officer or soldier, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

Priority of  
hearing by  
courts of  
cases in  
which Native  
officers and  
soldiers are  
concerned.

(2) The certificate from the proper military authority must state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No fee whatever shall be payable to the court in respect of the presentation of any such certificate or in respect of any application by or on behalf of any such officer or soldier for priority for the hearing of his case.

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for having been unable to do so, and shall cause a copy thereof to be furnished to such officer or soldier on his application, without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) If in any case a question arises as to the proper military authority qualified to grant such certificate as aforesaid, such question shall be at once referred by the court to the nearest officer commanding a corps, whose decision shall be final.

*Article 185.*

K

## (Section 73.)

Capture of  
deserters.

"Article 185.—(1) Whenever any person subject to these Articles deserts, the commanding officer of the corps, department or detachment to which he belongs shall give written information of the desertion to such civil, political or police authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose capture a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, to military custody.

(2) Such authorities shall also, by such means as appear to them best adapted for the purpose, prevent persons reasonably believed to be subject to these Articles from travelling through the areas subject to their jurisdiction, unless on duty, or furnished with a certificate of leave or discharge.

(3) Any police-officer may arrest, without warrant, any person reasonably believed to be subject to these Articles and to be travelling without authority, and shall bring him without delay before the nearest magistrate, or the nearest military commanding officer when no magistrate is readily accessible, to be dealt with according to law.

Apprehen-  
sion of mili-  
tary offend-  
ers.

"Article 186.—Whenever any person subject to these Articles, who is accused of any military offence, is within the jurisdiction of any civil, political or police officer, such officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his commanding officer.

Presumption  
as to signa-  
tures.

"Article 187.—In any proceeding under these Articles, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the civil or military service of the Government shall, on production, be presumed to have been duly signed by the person and in the character by whom  
and



## (Section 73.)

and in which it purports to have been signed, until the contrary is shown.

“*Article 188.*—(1) The Governor General in Council may direct that for the purposes of these Articles—

Portions of the forces under an Army Command.

- (a) any portion of Her Majesty's Indian Forces belonging to a Command shall, when serving beyond the ordinary limits of the Command, continue subject to the authority of the general officer of the Command; or
- (b) any portion of those forces not belonging to a Command shall be attached to a Command and shall be subject to the authority of the general officer of the Command.

(2) Except as may be directed under clause (1) of this article, any portion of the said forces shall, when serving in a Command, be for the purposes of these Articles subject to the authority of the general officer of that Command.

“*Article 189.*—Nothing in these Articles shall be deemed to affect the authority conferred on the Commander-in-Chief in India by any Act of Parliament or by Royal Warrant or Commission.

Saving of authority of Commander-in-Chief in India.

“*Article 190.*—(1) The Governor General in Council may, by notification, make rules consistent with these Articles to regulate the procedure of courts-martial and officers, military, civil or political, having any jurisdiction or authority under these Articles, and for the purpose of carrying these Articles into execution, so far as relates to the investigation, trial and punishment of offences triable under them.

Power to make rules.

(2) Rules under this article may provide among other matters for the following :

- (a) the assembly and procedure of courts of enquiry ;
- (b) the

## (Section 74.)

- (b) the convening and constituting of courts-martial;
- (c) the adjournment, dissolution and sittings of courts-martial;
- (d) the procedure to be observed in trials by courts-martial;
- (e) the confirmation and revision of the findings and sentences of courts-martial;
- (f) the carrying into effect sentences of courts-martial;
- (g) the forms of orders to be made under the provisions of these Articles relating to courts-martial, transportation or imprisonment.

(3) The Governor General in Council may by any such rule confer on any court-martial or officer any power (other than a power to try an accused person or pass a sentence) conferred on a court of original jurisdiction by the Code of Criminal Procedure, 1882. X of 18

Powers to apply Articles to certain forces under the Government of India.

“*Article 191.*—(1) The Governor General in Council may, by notification, apply all or any of the provisions of these Articles to any force raised and maintained in India under the authority of the Governor General in Council, and may cancel or modify any such notification.

(2) While any of the provisions of these Articles apply to any such force, the Governor General in Council may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of those provisions shall be exercised or performed in respect to that force.”

Addition of Second Appendix to Articles.

74. After the Appendix to the said Articles the Second Appendix set out in the Schedule to this Act shall be added.

THE SCHEDULE.

## THE SCHEDULE.

(See section 74.)

## THE SECOND APPENDIX.

(See article 91.)

FORM FOR ASSEMBLY AND PROCEEDINGS OF SUMMARY GENERAL  
COURT-MARTIAL.*Proceedings.*

\* At \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_ \* State the place

WHEREAS it appears to me that the persons named in the annexed schedule, and being subject to military law, have committed the offences in the said schedule mentioned, and I, the undersigned, an officer now in command of \_\_\_\_\_ on active service, am of opinion that it is not practicable, having due regard to the public service, to convene an ordinary Court-Martial to try such offences († or to delay the trial for reference to a superior qualified officer), I hereby convene a Summary General Court-Martial to try the said persons, and to consist of--

A.—Order convening the Court.

† Omit, except where convening officer is not a Commanding Officer and is below rank of Field Officer:

## PRESIDENT:

Rank.	Name.	Regiment.
_____	_____	_____

## MEMBERS.

Rank.	Name.	Regiment.
_____	_____	_____
_____	_____	_____
_____	_____	_____

I certify that the above Court assembled on the \_\_\_\_\_ day of \_\_\_\_\_ and duly tried the persons named in the said schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that schedule.

B.—Certificate of President as to Proceedings.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_

C. \_\_\_\_\_ D. \_\_\_\_\_

*President of the Court-Martial.*

I have

C.—Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the above schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences; and I am of opinion, with reference to the sentences of summary punishment mentioned in the schedule, that imprisonment cannot, with due regard to the public service, be carried into execution (\*and I am of opinion that it is not practicable, having due regard to the public service, to delay the cases for confirmation by any superior qualified authority).

\* Omit, except where under rules it is ordinarily the duty of the confirming officer to reserve the case.

Signed this                      day of                      18 .

E ..... F .....

*Field (or General) Officer in the Force (or Commanding).*

D.—Confirmation of reserve sentences.

I have dealt with the reserved findings and sentences in the manner stated in the last column of the schedule, and, subject to what I have there stated, I hereby confirm the said reserved findings and sentences.

Signed this                      day of                      18 .

G ..... H .....

*General (Field) Officer in the Force.*

E.—Confirmation of sentences of death or penal servitude.

Subject to what I have stated in the last column of the schedule, I hereby confirm the (finding and) sentence of death in the case of († and in the case of and of transportation in the case of († and in the case of the above sentences of death I am of opinion that by reason of ‡ it is not practicable, having due regard to the public service, to delay the case for confirmation by any qualified officer superior to myself).

† Omit, where confirmed by officer in the Command, ‡ State, according to the circumstances, the nature of the country, or the great distance, or the operations of the enemy.

Signed this                      day of                      18 .

J ..... K .....

*General (Field) Officer in Chief Command of the Forces.*



## (The Schedule.)

## Schedule.

Date

18

No.

Name of alleged Offender.*	Offence charged.	Plea.	Finding and, if convicted, sentence.†	How dealt with by confirming officer.
1	2	3	4	5
Ram Bux (Bun-niah).	Offence against person of inhabitant of country.	Guilty	Guilty. H. L. imprisonment for—	Confirmed. I remit— E.....F.....
262, Sepoy J h u n d a Singh, 167th Regiment.	Breaking into house in search of plunder.	Not guilty.	Guilty. Two months' H. L. imprisonment.	Not confirmed. E.....F.....
564, Sowar H o s s e i n Khan, 16th Regiment.	Drunk on post	Not guilty.	Guilty. Death. Recommended to mercy.	Reserved, or confirmed, but commuted to H. L. imprisonment for— E.....F..... Confirmed, but commuted to— year's transportation. J.....K.....
Person accompanying force (name unknown), white jacket and trousers, scar on right cheek.	Impeding provost-marshal.	Not guilty.	Not guilty.	
Sepoy in uniform of 67th Regiment (name unknown).	Offence against property of inhabitant of country.	Not guilty.	Guilty. H. L. imprisonment for—	Reserved. E.....F..... Confirmed. G.....H.....
P. Q. Convening Officer.		C. D. President.		

\* If the name of the person charged is unknown, he may be described as unknown, with such addition as will identify him.

† Recommendation to mercy to be inserted in this column.

# ACT No. I OF 1900.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 19th  
January, 1900.)*

An Act to amend the Indian Articles of War.

V of 1869. WHEREAS it is expedient to amend the Indian Articles of War; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Articles of War Amendment Act, 1900; and

Short title  
and com-  
mencement.

(2) It shall come into force at once.

V of 1869. 2. For sub-article (2) of article 4 of the said Indian Articles of War, the following sub-articles shall be substituted, namely :—

Substitution  
of new sub-  
articles for  
sub-article  
(2) of article  
4, Act V,  
1869.

“(2) Unattested recruits who, in the opinion of their Commanding Officer, are not likely to make good soldiers, and persons attested under these Articles who are serving in a cavalry corps and who have, in the opinion of their Commanding Officer, failed to become good riders, shall be liable to discharge from the service by order of the Commanding Officer of the corps or department to which they may belong:

“Provided that, in the case of persons attested under these Articles, this liability shall cease on the completion of their third year of service.

“(3) Every person so dismissed or discharged shall forfeit all claim to pension.”

## ACT No. XIII OF 1904.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*[Received the assent of the Governor General on the 9th September, 1904.]*

An Act further to amend the Indian Articles  
of War.

WHEREAS it is expedient further to amend the  
Indian Articles of War; It is hereby enacted as  
follows:

1. This Act may be called the Indian Articles of War (Amendment) Act, 1904. Short title.

2. To article 89A, sub-article (1), of the Indian Articles of War the following clause shall be added, Addition to a title 89A, Act V, 1869.  
namely :

“(e) in the case of any person subject to these Articles, who is serving out of India, not under the orders of the Commander-in-Chief in India, in any station beyond the seas as defined in section 190, clause (25), of the Army Act, the officer who convenes the court-martial or who has authority to convene such court-martial.”

3. In the said Articles—

(a) the brackets and figure “(1)” in article 91, and sub-article (2) of the same article, and

(b) the Second Appendix,  
shall be repealed.

Repeal of part of article 91 and Second Appendix, Act V, 1869.

V of 1869.

V of 1869.

44 & 45  
Vict., c. 58.





## ACT No. V of 1905.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 18th July, 1905.)*

### An Act further to amend the Indian Articles of War.

V of 1869. **WHEREAS** it is expedient further to amend the Indian Articles of War; It is hereby enacted as follows:—

1. This Act may be called the Indian Articles of War (Amendment) Act, 1905. Short title.

V of 1869. 2. In article 4, sub-article (1), clause (b), and in article 161 of the Indian Articles of War, for the words "division or district" the words "division, district or brigade" shall be substituted. Amendment of articles 4 and 161 of Indian Articles of War.

[Price one anna.]

G. of I. Central Printing Office.—No. 18 L. D.—2-8-1905.—5,500.—W. S. D'R.



A COLLECTION  
OF  
THE ACTS

PASSED BY

THE GOVERNOR GENERAL OF INDIA IN COUNCIL

IN THE YEAR

1911.



CALCUTTA  
SUPERINTENDENT GOVERNMENT PRINTING, INDIA  
1912

*[Price Five Annas and six pies.]*

THE INDIAN ARMY ACT, 1911  
(VIII OF 1911).

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## ACT NO. VIII OF 1911.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 16th March 1911.)*

An Act to consolidate and amend the law relating to the government of His Majesty's Native Indian Forces.

WHEREAS it is expedient to consolidate and amend the law relating to the government of the Native officers, soldiers and other persons in His Majesty's Indian Forces; It is hereby enacted as follows:—

## CHAPTER I.

## PRELIMINARY.

1. (1) This Act may be called the Indian Army Act, 1911. Short title  
and com-  
mencement.

(2) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, direct in this behalf.

*Application of Act.*

2. (1) The following persons shall be subject to this Act, namely :— Persons  
subject to  
Act.

(a) Native officers and warrant officers;

(b) persons enrolled under this Act;

(c) persons not otherwise subject to military law, who, on active service, in camp, on the march, or at any frontier post specified by the Governor General in Council by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, His Majesty's Forces :

Provided

*(Chapter I.—Preliminary.)*

Provided that if any person claims to belong to a class to which the Army Act is, and this Act is not, applicable, the burden of proving that he belongs to that class shall lie upon him. 44 & 45  
c. 58.

(2) Every person subject to this Act under sub-section (1), clause (a) or (b), shall remain so subject until duly discharged or dismissed.

Special provision as to rank in certain cases.

3. (1) The Governor General in Council may, by notification, direct that any persons or class of persons subject to this Act under section 2, sub-section (1), clause (c), shall be so subject as Native officers, warrant officers or non-commissioned officers, and may authorize any officer to give a like direction with respect to any such person and to cancel such direction.

(2) All persons subject to this Act other than officers, warrant officers and non-commissioned officers shall, if they are not persons in respect of whom a notification or direction under sub-section (1) is in force, be deemed to be of a rank inferior to that of a non-commissioned officer.

Commanding officer of persons subject to military law under section 2, clause (c).

4. Every person subject to this Act under section 2, sub-section (1), clause (c), shall, for the purposes of this Act, be deemed to be under the commanding officer of the corps, department or detachment (if any) to which he is attached, and if he is not attached to any corps, department or detachment, under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force :

Provided that an officer commanding a force shall not place a person under the command of an officer of official rank inferior to that of such person if there is present at the place where such person is any officer of higher rank under whose command he can be placed.

5. (1) The

## (Chapter I.—Preliminary.)

5. (1) The Governor General in Council may, <sup>Powers to apply Act to certain forces under the Government of India.</sup> by notification, apply all or any of the provisions of this Act to any force raised and maintained in India under the authority of the Governor General in Council.

(2) While any of the provisions of this Act apply to any such force, the Governor General in Council may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of that force.

6. (1) Whenever persons subject to this Act are <sup>Officers to exercise powers in case of foreign service</sup> serving out of India under an officer not subject to the authority of the Governor General in Council, the Governor General in Council may prescribe the officer by whom the powers which, under this Act, may be exercised by officers commanding armies, divisions and brigades, shall, as regards such persons, be exercised.

(2) The Governor General in Council may confer such powers either absolutely, or subject to such restrictions, reservations, exceptions and conditions as he may think fit.

*Definitions.*

7. In this Act, unless there is something repugnant in the subject or context,— <sup>Definitions.</sup>

(1) "British officer" means a person holding a commission in His Majesty's land forces:

(2) "Native officer" means a person commissioned, gazetted or in pay as an officer holding a Native rank in His Majesty's Indian Forces:

(3) "warrant officer" means a person appointed, gazetted or in pay as a Native warrant officer in His Majesty's Indian Forces:

(4) "non-commissioned officer" means a person attested under this Act holding a Native non-commissioned rank in His Majesty's Indian Forces, and includes an acting non-commissioned officer:

(5) "officer"



*(Chapter I.—Preliminary.)*

(5) "officer" means a British officer or Native officer, but does not include a warrant officer or non-commissioned officer :

(6) "commanding officer," when used in any provision of this Act with reference to any separate portion of His Majesty's forces or to any department, means the British officer whose duty it is under the regulations of the army, or, in the absence of any such regulation, by the custom of the service, to discharge with respect to that portion of the forces or that department the functions of commanding officer in regard to matters of the description referred to in that provision :

(7) "superior officer," when used in relation to a person subject to this Act, includes a warrant officer and a non-commissioned officer; and, as regards persons placed under his orders, a warrant officer or non-commissioned officer subject to the Army Act :

44 & 45 Vict.  
c. 58.

(8) "army," "division" and "brigade" mean respectively an army, division or brigade which is under the command of an officer subject to the authority of the Governor General in Council :

(9) "corps" means any separate body of persons subject to this Act or the Army Act which is prescribed as a corps for the purposes of all or any of the provisions of this Act :

(10) "independent brigade" means a brigade which does not form part of a division :

(11) "department" includes any division or branch of a department :

(12) "enemy" includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of a person subject to military law to act :

(13) "active service," as applied to a person subject to this Act, means the time during which such person is attached to, or forms part of, a force which is engaged in operations against an enemy, or is engaged in military operations in, or is on the line

of



*(Chapter II.—Enrolment and Attestation.)*

of march to, a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country :

(14) "military custody" means the arrest or confinement of a person according to the usages of the service :

(15) "military reward" includes any gratuity or annuity for long service or good conduct, any good conduct pay, good service pay or pension, and any other military pecuniary reward :

(16) "court-martial" means a court-martial held under this Act :

(17) "criminal court" means a court of ordinary criminal justice in British India, or established elsewhere by the authority of the Governor General in Council :

(18) "civil offence" means an offence which, if committed in British India, would be triable by a criminal court :

(19) "offence" means any act or omission punishable under this Act, and includes a civil offence as hereinbefore defined :

(20) "notification" means a notification published in the Gazette of India :

(21) "prescribed" means prescribed by rules made under this Act : and

(22) all words and expressions used herein and defined in the Indian Penal Code and not hereinbefore defined shall be deemed to have the meanings respectively attributed to them by that Code.

XLV of 1860.

## CHAPTER II.

### ENROLMENT AND ATTESTATION.

#### *Enrolment.*

8. Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, Procedure before enrolling officer.

*(Chapter II.—Enrolment and Attestation.)*

rolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled; and shall put to him the questions set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.

Enrolment.

9. If, after complying with the provisions of section 8, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if he perceives no impediment, he shall sign the enrolment paper, and the person shall then be deemed to be enrolled.

Presumption of enrolment in certain cases.

10. Every person who has for the space of six months been in the receipt of military pay and been borne on the rolls of any corps or department (of which the last pay statement, if produced, shall be evidence) shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on the ground of illegality or irregularity in his enrolment.

*Attestation.*

Persons to be attested.

11. The following persons shall be attested, namely :—

- (a) all persons enrolled as combatants;
- (b) all other enrolled persons prescribed by the Governor General in Council.

Mode of attestation.

12. (1) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his commanding officer in front of his corps or such portion thereof or such members of his department as may be present or by any other prescribed person.

(2) The

*(Chapter III.—Dismissal and Discharge.)*

(2) The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will be faithful to His Majesty, His heirs and successors, and that he will serve in His Majesty's Indian Forces and go wherever he is ordered by land or sea, and that he will obey all commands of any officer set over him, even to the peril of his life.

(3) The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper, and authenticated by the signature of the officer administering the oath or affirmation.

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### CHAPTER III.

#### DISMISSAL AND DISCHARGE.

13. The Governor General in Council or the Commander-in-Chief in India may dismiss from the service any person subject to this Act.

Dismissal by Governor General in Council and Commander-in-Chief in India.

14. An officer commanding an army, division or brigade, or any prescribed officer, may dismiss from the service any person serving under his command other than a Native officer.

Dismissal by officer commanding army, division, brigade, etc.

15. Every person sentenced by any court-martial or by any criminal court to transportation or to rigorous imprisonment for any term exceeding three months, shall be dismissed from the service by his commanding officer :

Dismissal of convicts.

Provided that on active service any such person may be retained to serve in the ranks, and his service therein shall be reckoned as part of his term of transportation or imprisonment.

16. The prescribed authority may, in conformity with any rules prescribed in this behalf, discharge from the service any person subject to this Act.

Discharge.

17. Every

G



*(Chapter III.—Dismissal and Discharge. Chapter IV.—Summary Reduction and Punishments otherwise than by order of Court-martial.)*

Certificate to  
person  
dismissed  
or discharged.

17. Every enrolled person who is dismissed or discharged from the service shall be furnished by his commanding officer with a certificate, in the English language and in the mother tongue of such person (when his mother tongue is not English), setting forth—

- (a) the authority dismissing or discharging him;
- (b) the cause of his dismissal or discharge;
- (c) the full period of his service in the army.

Discharge,  
etc., out of  
India.

18. (1) Any person enrolled under this Act who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled or ordered to be discharged, is serving out of India, and requests to be sent to India, shall, before being discharged, be sent to India with all convenient speed.

(2) Any person enrolled under this Act who is dismissed from the service and who, when he is so dismissed, is serving out of India, shall be sent to India with all convenient speed.

(3) If any such person has been sentenced by court-martial to any punishment, such punishment may be inflicted before he is sent to India.

#### CHAPTER IV.

##### SUMMARY REDUCTION AND PUNISHMENTS OTHERWISE THAN BY ORDER OF COURT-MARTIAL.

Reduction of  
non-com-  
missioned  
officers.

19. (1) The Commander-in-Chief in India, an officer commanding an army, division or brigade, or any prescribed officer, may reduce to a lower grade or to the ranks any non-commissioned officer under his command.

(2) The commanding officer of an acting non-commissioned officer may order him to revert to his permanent



*(Chapter IV.—Summary Reduction and Punishments otherwise than by order of Court-martial.)*

permanent grade as a non-commissioned officer or, if he has no permanent grade above the ranks, to the ranks.

20. (1) The Commander-in-Chief in India may, <sup>Minor</sup> subject to the control of the Governor General in <sup>punishments.</sup> Council, specify the minor punishments to which persons subject to this Act shall be liable without the intervention of a court-martial, and the officer or officers by whom, and the extent to which, such minor punishments may be awarded.

(2) Imprisonment in military custody may be specified as such a minor punishment, provided that—

(a) the term of such imprisonment shall not exceed twenty-eight days; and

(b) it shall not be awarded to any person of or above the rank of non-commissioned officer, or who, when he committed the offence in respect of which it is awarded, was of or above such rank.

21. Whenever any weapon or part of a weapon <sup>Collective</sup> forming part of the equipment of a half squadron, <sup>finer.</sup> battery, company or other similar unit is lost or stolen, the officer commanding the army, division or independent brigade to which such unit belongs may, after obtaining the report of a court of inquiry, impose a collective fine upon the Native officers, non-commissioned officers and men of such unit, or upon so many of them as, in his judgment, should be held responsible for such loss or theft.

22. (1) For any offence, in breach of good order, <sup>Punishment</sup> the commanding officer of any corps or detachment <sup>of certain</sup> on active service, in camp, on the march, or at any <sup>Native</sup> frontier post specified by the Governor General in <sup>followers.</sup> Council by notification in this behalf at which troops are stationed, may punish any Native follower of such

(Chapter IV.—*Summary Reduction and Punishments otherwise than by order of Court-martial.*)

such corps or detachment who is subject to this Act under section 2, sub-section (1), clause (c)—

- (a) if such follower is not a menial servant, with imprisonment for a term which may extend to thirty days, or with fine which may extend to fifty rupees:
- (b) if such follower is a menial servant, with imprisonment for a term which may extend to seven days, or, if on active service, with corporal punishment not exceeding twelve strokes of a rattan.

(2) Imprisonment awarded under this section may be carried out in a military guard, or in a jail, as ordered by the said commanding officer; and the officer in charge of any jail shall, on the delivery to him of the person of the offender, with a warrant, under the hand of the said commanding officer, detain the offender according to the exigency of the warrant or until he is discharged by due course of law.

*Provost-Marshals.*

Appointment.

23. For the prompt and instant repression of irregularities and offences committed in the field or on the march, provost-marshals may be appointed by the Commander-in-Chief in India or an officer commanding an army, division or independent brigade or an officer commanding the forces in the field; and the powers and duties of such provost-marshals shall be regulated according to the established custom of war and the rules of the service.

Duties and powers.

24. (1) The duties of a provost-marshal so appointed are to take charge of prisoners confined for offences of a general description, to preserve good order and discipline, and to prevent breaches of the same by persons belonging or attached to the army.

(2) The provost-marshal may punish, corporally, then and there, any person subject to this Act below the rank of non-commissioned officer who, on active service and in his view or in the view of any of his assistants,

*(Chapter V.—Offences.)*

assistants, commits any breach of good order and military discipline :

Provided that such punishment shall be limited to the necessity of the case, and shall accord with the orders which the provost-marshal may from time to time receive from the officer commanding the troops, and shall be inflicted with the regulation cat :

Provided also that the orders of the said commanding officer shall in no case authorise such corporal punishment in excess of that awardable by sentence of a court-martial.

(3) If the offender is not on active service or if the actual commission of the offence is not witnessed by the provost-marshal or any of his assistants, but sufficient proof can be obtained of the offenders guilt, he shall report the case to the officer commanding the troops, who shall deal with the case as he may deem most conducive to the maintenance of good order and military discipline.

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CHAPTER V.

## OFFENCES.

*Offences in respect of Military Service.*

25. Any person subject to this Act who commits any of the following offences, that is to say,—

Offences  
punishable  
with death.

- (a) shamefully abandons or delivers up any garrison, fortress, post or guard committed to his charge, or which it is his duty to defend; or
- (b) in presence of an enemy, shamefully casts away his arms or ammunition, or intentionally uses words or any other means to induce any person subject to military law to abstain from acting against the enemy, or to discourage such person from acting against the enemy, or misbehaves in such manner as to show cowardice; or

(c) directly



*(Chapter V.—Offences.)*

- (c) directly or indirectly holds correspondence with, or communicates intelligence to, the enemy, or any person in arms against the State, or who, coming to the knowledge of any such correspondence or communication, omits to discover it immediately to his commanding or other superior officer; or
- (d) treacherously makes known the watchword to any person not entitled to receive it; or
- (e) directly or indirectly assists or relieves with money, victuals or ammunition, or knowingly harbours or protects, any enemy or person in arms against the State; or
- (f) in time of war, or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports calculated to create alarm or despondency; or
- (g) being a sentry in time of war or alarm, or over any State prisoner, treasure, magazine or dockyard, sleeps upon his post, or quits it without being regularly relieved or without leave; or
- (h) in time of action, leaves his commanding officer or his post or party to go in search of plunder; or
- (i) in time of war, quits his guard, picquet, party or patrol without being regularly relieved or without leave; or
- (j) in time of war or during any military operation, uses criminal force to, or commits an assault on, any person bringing provisions or other necessities to the camp or quarters of any of His Majesty's forces, or forces a safeguard, or breaks into any house or any other place for plunder, or plunders, injures or destroys any field, garden or other property of any kind;  
shall;



*(Chapter V.—Offences.)*

shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

**26.** Any person subject to this Act who commits any of the following offences, that is to say,— Offences not punishable with death.

- (a) strikes, or forces or attempts to force, any sentry; or
- (b) in time of peace, intentionally occasions a false alarm in camp, garrison or cantonment; or
- (c) being a sentry, or on guard, plunders or wilfully destroys or injures any property placed under his charge or under charge of his guard; or
- (d) being a sentry, in time of peace, sleeps upon his post, or quits it without being regularly relieved or without leave;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

*Mutiny and Insubordination.*

**27.** Any person subject to this Act who commits any of the following offences, that is to say,— Offences punishable with death.

- (a) begins, excites, causes or joins in any mutiny; or
- (b) being present at any mutiny, does not use his utmost endeavours to suppress the same; or
- (c) knowing or having reason to believe in the existence of any mutiny, or of any intention to mutiny, or of any conspiracy against the State, does not, without delay, give information thereof to his commanding or other superior officer; or
- (d) uses or attempts to use criminal force to, or commits an assault on, his superior officer, whether

*(Chapter V.—Offences.)*

whether on or off duty, knowing or having reason to believe him to be such; or

- (e) disobeys the lawful command of his superior officer;

shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

Offences not  
punishable  
with death,

28. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) is grossly insubordinate or insolent to his superior officer in the execution of his office; or
- (b) refuses to superintend or assist in the making of any field-work or other military work of any description ordered to be made either in quarters or in the field; or
- (c) impedes a provost-marshal or an assistant provost-marshal, or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of a provost-marshal, or, when called on, refuses to assist, in the execution of his duty, the provost-marshal, assistant provost-marshal, or any such officer, non-commissioned officer or other person;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

*Desertion, Fraudulent Enrolment and Absence  
without Leave.*

Desertion,

29. Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

30. Any

*(Chapter V.—Offences.)*

30. Any person subject to this Act who commits any of the following offences, that is to say,—

Harbouring  
deserter,  
absence  
without leave,  
etc.

- (a) knowingly harbours any deserter, or who, knowing, or having reason to believe, that any other person has deserted, or that any deserter has been harboured by any other person, does not without delay give information thereof to his own or some other superior officer, or use his utmost endeavours to cause such deserter to be apprehended; or
- (b) knowing, or having reason to believe, that a person is a deserter, procures or attempts to procure the enrolment of such person; or
- (c) without having first obtained a regular discharge from the corps or department to which he belongs, enrolls himself in the same or any other corps or department; or
- (d) absents himself without leave, or without sufficient cause overstays leave granted to him; or
- (e) being on leave of absence and having received information from proper authority that any corps or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay; or
- (f) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or
- (g) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer quits the parade or line of march; or

(h) in

*(Chapter V.—Offences.)*

- (h) in time of peace, quits his guard, picquet or patrol without being regularly relieved or without leave; or
- (i) without proper authority is found two miles or upwards from camp; or
- (j) without proper authority is absent from his cantonment or lines after tattoo, or from camp after retreat-beating;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

*Disgraceful Conduct.*

Disgraceful  
conduct,

31. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) dishonestly misappropriates or converts to his own use any money, provisions, forage, arms, clothing, ammunition, tools, instruments, equipments or military stores of any kind, the property of Government, entrusted to him; or
- (b) dishonestly receives or retains any property in respect of which an offence under clause (a) has been committed, knowing or having reason to believe the same to have been dishonestly misappropriated or converted; or
- (c) wilfully destroys or injures any property of Government entrusted to him; or
- (d) commits theft in respect of any property of Government, or of any military mess, band or institution, or of any person subject to military law, or serving with, or attached to, the army; or
- (e) dishonestly receives or retains any such property as is specified in clause (d) knowing  
or



*(Chapter V.—Offences.)*

or having reason to believe it to be stolen;  
or

- (f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person; or
- (g) malingers or feigns or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity; or
- (h) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person; or
- (i) commits any offence of a cruel, indecent or unnatural kind, or attempts to commit any such offence and does any act towards its commission;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

*Intoxication.*

32. Any person subject to this Act who is in a state of intoxication, whether on duty or not on duty, shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned. Intoxication.

*Offences in relation to Persons in Custody.*

33. Any person subject to this Act who, without proper authority, releases any State prisoner, enemy or person taken in arms against the State, placed under his charge, or who negligently suffers any such prisoner, enemy or person to escape, shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned. Offences punishable with death.

34. Any

*(Chapter V.—Offences.)*

Offences not  
punishable  
with death.

34. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) being in command of a guard, picquet or patrol, refuses to receive any prisoner or person duly committed to his charge; or
- (b) without proper authority releases any prisoner or person placed under his charge, or negligently suffers any such prisoner or person to escape; or
- (c) being in military custody, leaves such custody before he is set at liberty by proper authority;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

*Offences in relation to Property.*

Offences in  
relation to  
property.

35. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) commits extortion, or without proper authority exacts from any person carriage, portorage or provisions; or
- (b) in time of peace, commits house-breaking for the purpose of plundering, or plunders, destroys or damages any field, garden or other property; or
- (c) designedly or through neglect kills, injures, makes away with, ill-treats or loses his horse or any animal used in the public service; or
- (d) makes away with, or is concerned in making away with, his arms, ammunition, equipments, instruments, tools, clothing or regimental necessities; or
- (e) loses by neglect anything mentioned in clause (d); or
- (f) wilfully injures anything mentioned in clause (d) or any property belonging to Government,

*(Chapter V.—Offences.)*

Government, or to any military mess, band or institution, or to any person subject to military law, or serving with, or attached to the army; or

- (g) sells, pawns, destroys or defaces any medal or decoration granted to him;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

*Offences in relation to False Documents and Statements.*

36. Any person subject to this Act who commits any of the following offences, that is to say,—

False accusations and offences in relation to documents.

- (a) makes a false accusation against any person subject to military law, knowing such accusation to be false; or
- (b) in making any complaint under section 117, knowingly makes any false statement affecting the character of any person subject to military law, or knowingly and wilfully suppresses any material fact; or
- (c) obtains or attempts to obtain for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement; or
- (d) knowingly furnishes a false return or report of the number or state of any men under his command or charge, or of any money, arms, ammunition, clothing, equipments, stores or other property in his charge, whether

*(Chapter V.—Offences.)*

whether belonging to such men or to Government or to any person in or attached to the army, or who, through design or culpable neglect, omits or refuses to make or send any return or report of the matters aforesaid;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

False answers  
on enrolment.

**37.** Any person having become subject to this Act who is discovered to have made a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled, shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

*Offences in relation to Courts-martial.*

Offences in  
relation to  
courts-  
martial.

**38.** Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) when duly summoned to attend as a witness before a court-martial, intentionally omits to attend, or refuses to be sworn or affirmed or to answer any question, or to produce or deliver up any book, document or other thing which he may have been duly warned and called upon to produce or deliver up; or
- (b) intentionally offers any insult or causes any interruption or disturbance to, or uses any menacing or disrespectful word, sign or gesture, or is insubordinate or violent in the presence of, a court-martial while sitting; or
- (c) having been duly sworn or affirmed before any court-martial or other military court competent to administer an oath or affirmation, makes any statement which is false,



*(Chapter V.—Offences.)*

false, and which he either knows or believes to be false or does not believe to be true;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

*Miscellaneous Military Offences.*

**39.** Any person subject to this Act who commits any of the following offences, that is to say,—

Miscellaneous  
military  
offences.

(a) being an officer or warrant officer, behaves in a manner unbecoming his position and character; or

(b) strikes or otherwise ill-treats any person subject to this Act being his subordinate in rank or position; or

(c) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority; or

(d) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person; or

(e) attempts to commit suicide and does any act towards the commission of such offence; or

(f) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bázár, carrying a sword, bludgeon or other offensive weapon; or

(g) directly

*(Chapter V.—Offences.)*

- (g) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service; or
- (h) neglects to obey any general or garrison or other orders; or
- (i) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

*Abetment.*

Abetment.

40. Every person subject to this Act who abets any offence punishable under this Act may be punished with the punishment provided in this Act for such offence.

*Civil Offences.*

Civil offences committed outside British India or on active service in British India.

41. Every person subject to this Act who at any place beyond British India, or when on active service in British India, commits any civil offence shall be deemed to be guilty of an offence against military law, and, if charged therewith under this section, shall, subject to the provisions of this Act, be liable to be tried for the same by court-martial, and on conviction to be punished as follows, that is to say,—

- (a) if the offence is one which would be punishable under the law of British India with death or with transportation, he shall be liable to suffer any punishment assigned for the offence by the law of British India; and

(b) in

- (b) in other cases, he shall be liable to suffer any punishment assigned for the offence by the law of British India, or such punishment as might be awarded to him in pursuance of this Act in respect of an act prejudicial to good order and military discipline.

42. Every person subject to this Act who commits or attempts to commit or abets the commission of an offence punishable under Chapter VI of the Indian Penal Code, or any of the following offences against any person subject to military law, that is to say, murder, culpable homicide or any offence punishable under any of the sections 323 to 335 (both inclusive), or section 506 of the said Code, shall be deemed to be guilty of an offence against military law, and, if charged under this section with any such offence, shall, subject to the provisions of this Act, be liable to be tried by court-martial, and on conviction shall be liable to suffer any punishment assigned for the offence by the said Code.

Certain civil offences triable by military law.

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## CHAPTER VI.

### PUNISHMENTS.

43. Punishments may be inflicted in respect of offences committed by persons subject to this Act, and convicted by court-martial, according to the scale following, that is to say,—

- (a) death;
- (b) transportation for life or for any period not less than seven years;
- (c) imprisonment (with or without solitary confinement) for any term not exceeding fourteen years;
- (d) dismissal from the service;

(e) in

## (Chapter VI.—Punishments.)

- (e) in the case of officers and warrant officers, suspension from rank, pay and allowances for any stated period;
- (f) reduction, in the case of a warrant officer, to a lower grade or class (if any) of warrant officer, or in the case of a non-commissioned officer, to a lower grade or to the ranks;
- (g) in the case of officers, warrant officers and non-commissioned officers, forfeiture of seniority of rank;
- (h) forfeitures and stoppages as follows, namely:—
  - (i) forfeiture of service for the purpose of promotion, increased pay, pension or any other prescribed purpose;
  - (ii) forfeiture of any military decoration or military reward;
  - (iii) forfeiture, in the case of a person sentenced to dismissal from the service or whose sentence involves such dismissal, of all arrears of pay and allowances and other public money due to him at the time of such dismissal;
  - (iv) stoppages of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

Lower  
punishments.

44. Where in respect of any offence under this Act there is specified a particular punishment or such less punishment as is in this Act mentioned, there may be awarded in respect of that offence instead of such particular punishment (but subject to the other provisions of this Act as to punishments and regard being had to the nature and degree of the offence) any one punishment lower in the above scale than the particular punishment.

45. Where



## (Chapter VI.—Punishments.)

45. Where any person subject to this Act and <sup>Corporal</sup> under the rank of warrant officer— <sup>punishment.</sup>

- (a) on active service is guilty of any offence; or
- (b) at any time is guilty of the offence specified in clause (d) of section 31; or
- (c) at any time is guilty of a civil offence which would be punishable with whipping under the law of British India, and is triable by court-martial under this Act,

it shall be lawful for a court-martial to award for that offence corporal punishment not exceeding thirty lashes.

46. Corporal punishment shall, for the purpose of commutation, be deemed to stand in the scale of <sup>Position of</sup> punishments next below dismissal. <sup>corporal</sup> <sup>punishment</sup> <sup>in scale.</sup>

47. A sentence of a court-martial may award, in <sup>Combination</sup> addition to or without any one other punishment, any <sup>of punish-</sup> one or more of the punishments specified in clauses <sup>ments.</sup> (d), (f) and (h) of section 43.

48. Whenever any person is sentenced to rigorous imprisonment, the court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say,— <sup>Solitary</sup> <sup>confinement.</sup>

- (a) a time not exceeding one month if the term of imprisonment does not exceed six months;
- (b) a time not exceeding two months if the term of imprisonment exceeds six months and does not exceed one year;
- (c) a time not exceeding three months if the term of imprisonment exceeds one year.

49. A non-commissioned officer sentenced by court-martial to transportation, imprisonment, corporal punishment or dismissal from the service, shall be deemed to be reduced to the ranks. <sup>Reduction of</sup> <sup>non-commis-</sup> <sup>sioned officers</sup> <sup>to ranks.</sup>

## CHAPTER VII.

*(Chapter VII.—Penal Deductions.)*

## CHAPTER VII.

## PENAL DEDUCTIONS.

Deductions  
from pay and  
allowances.

50. The following penal deductions may be made from the pay and allowances of a person subject to this Act, that is to say,—

- (a) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of imprisonment awarded by a criminal court, a court-martial, or an officer exercising authority under section 20;
- (b) all pay and allowances for every day whilst he is in custody on a charge for an offence of which he is afterwards convicted by a criminal court or court-martial, or on a charge of absence without leave for which he is afterwards awarded imprisonment by an officer exercising authority under section 20;
- (c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the proper medical officer attending on him at the hospital to have been caused by an offence under this Act committed by him;
- (d) all pay and allowances ordered by a court-martial to be suspended or forfeited under section 43;
- (e) any sum ordered by a court-martial to be stopped under section 43;
- (f) any sum required to make good such compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, regimental necessities or military decoration,

*(Chapter VII.—Penal Deductions.)*

decoration, or to any buildings or property, as may be awarded by his commanding officer;

- (g) any sum required to pay a fine awarded by a criminal court, a court-martial exercising jurisdiction under section 41 or section 42, or an officer exercising authority under section 20 or section 21 :

Provided that the total deductions from the pay and allowances of a person subject to this Act made under clauses (e) to (g), both inclusive, shall not (except in the case of a person sentenced to dismissal or whose sentence involves dismissal) exceed in any one month one-half of his pay and allowances for that month.

*Explanation.*—For the purposes of clauses (a) and (b)—

- (i) absence or custody for six consecutive hours or upwards, whether wholly in one day or partly in one day and partly in another, may be reckoned as absence or custody for a day;
- (ii) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody; and
- (iii) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person.

51. Any sum authorized by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money due to him other than a pension.

Deductions from public money other than pay.

52. Any

(Chapter VII.—*Penal Deductions.* Chapter VIII.  
—*Courts-martial.*)

Remission of  
deductions.

52. Any deduction from pay and allowances authorized by this Act may be remitted in such manner and by such authority as may from time to time be prescribed.

## CHAPTER VIII.

### COURTS-MARTIAL.

#### *Constitution and Dissolution of Courts-martial.*

Courts-martial  
and the kinds  
thereof.

53. For the purposes of this Act there shall be four kinds of courts-martial, that is to say,—

- (1) general courts-martial;
- (2) district courts-martial;
- (3) summary general courts-martial; and
- (4) summary courts-martial.

Power to  
convene  
general  
courts-  
martial,

54. A general court-martial may be convened by the Commander-in-Chief in India, or by any officer empowered in this behalf by warrant of the Commander-in-Chief in India.

Power to  
convene  
district  
courts-  
martial.

55. A district court-martial may be convened by any officer having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such officer.

Contents of  
warrant  
issued under  
section 54 or  
section 55.  
Composition  
of general  
courts-  
martial.

56. A warrant issued under section 54 or section 55 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

57. A general court-martial shall consist of not less than seven officers unless that number, due regard being had to the public service, is not available, in which case the court may consist of not less than five officers.

Composition  
of district  
courts-  
martial.

58. A district court-martial shall consist of not less than three officers.

Convening \*  
order to state  
if larger  
number of  
officers is not  
available,

59. Whenever a general court-martial is ordered to be composed of the smaller number of officers specified in section 57, the order convening the court



*(Chapter VIII.—Courts-martial.)*

court shall state that the larger number of officers is not, due regard being had to the public service, available, and such statement shall be conclusive evidence of the fact so stated.

60. The officers composing a general or district court-martial shall, at the discretion of the convening officer, but subject to the provisions of section 61, either be British or Native officers, but shall not be partly British and partly Native officers.

Composition  
of general  
or district  
courts-  
martial

61. (1) Any person subject to this Act who is under orders for trial by general or district court-martial may claim to be tried by British officers.

Claim to trial  
by British  
officers.

(2) In all cases the right of making such a claim shall, before the court is convened, be explained to the person under orders for trial by the commanding officer, or some officer deputed by him in this behalf, and, when such a claim is made, the court shall be constituted accordingly.

62. The following authorities shall have power to convene a summary general court-martial, namely:—

Convening of  
summary  
general courts-  
martial.

- (a) an officer empowered in this behalf by an order of the Governor General in Council or of the Commander-in-Chief in India;
- (b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf;
- (c) an officer commanding any detached portion of His Majesty's troops upon active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by an ordinary general court-martial.

63. A summary general court-martial shall consist of not less than three officers.

Composition  
of summary  
general courts-  
martial.  
Summary  
courts-martial.

64. (1) A summary court-martial may be held—

- (a) by the commanding officer of any corps or department of His Majesty's Indian forces,

## (Chapter VIII.—Courts-martial.)

forces, or of any detachment of those forces;

(b) by the commanding officer of any British corps or detachment to which details subject to this Act are attached.

(2) At every summary court-martial the officer holding the trial shall alone constitute the court, but the proceeding shall be attended throughout by two other officers who shall not, as such, be sworn or affirmed.

Dissolution  
of courts.

65. (1) If a court-martial after the commencement of a trial is reduced below the smallest number of officers of which it is by this Act required to consist, it shall be dissolved :

Provided that a general court-martial shall not be dissolved under the provisions of this sub-section unless it is reduced below five officers.

(2) If, on account of the illness of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(3) Where a court-martial is dissolved under this section, the accused may be tried again.

*Jurisdiction of Courts-martial.*

Prohibition  
of second  
trial.

66. When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been summarily dealt with for an offence under section 20 or section 22, he shall not be liable to be tried again for the same offence by a court-martial or dealt with summarily in respect of it under either of the said sections.

Limitation  
of trial.

67. No person subject to this Act shall be tried or punished by a court-martial for any offence after the expiration of three years from the date of such offence, unless the offender, by reason of absence or of some other manifest impediment, could not be arrested or confined and brought to trial within that period;

*(Chapter VIII.—Courts-martial.)*

period; in which case he shall be liable to be tried at any time not exceeding two years after such impediment has ceased.

**68.** Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever. Place of trial.

*Adjustment of the jurisdiction of Courts-martial and Criminal Courts.*

**69.** When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the prescribed military authority to decide before which court the proceedings shall be instituted, and, if that authority decides that they shall be instituted before a court-martial, to direct that the accused person shall be detained in military custody. Order in case of concurrent jurisdiction.

**70.** (1) When a criminal court having jurisdiction is of opinion that proceedings ought to be instituted before itself in respect of any alleged offence, it may, by written notice, require the prescribed military authority at its option either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Governor General in Council. Power of criminal court to require delivery of offender.

(2) In every such case the said authority shall either deliver over the offender in compliance with the requisition or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Governor General in Council, whose order upon such reference shall be final.

**71.** (1) Notwithstanding anything contained in section 26 of the General Clauses Act, 1897, or in section 403 of the Code of Criminal Procedure, 1898, a person convicted or acquitted by a court-martial may be afterwards tried by a criminal court for the same offence or on the same facts. Trial by court-martial no bar to subsequent trial by criminal court.

X of 1897.

V of 1898.

(2) If

*(Chapter VIII.—Courts-martial.)*

(2) If a person sentenced by a court-martial in pursuance of this Act to punishment for an offence is afterwards tried by a criminal court for the same offence or on the same facts, that court shall, in awarding punishment, have regard to the military punishment he may already have undergone.

*Powers of Courts-martial.*

Powers of  
general and  
summary  
general  
courts-  
martial.

**72.** A general or summary general court-martial shall have power to try any person subject to this Act for any offence made punishable therein, and to pass any sentence authorized by this Act.

Powers of  
district court-  
martial.

**73.** A district court-martial shall have power to try any person subject to this Act other than an officer for any offence made punishable therein, and to pass any sentence authorized by this Act other than a sentence of death, or transportation, or imprisonment for a term exceeding two years.

Offences  
triable by  
summary  
court-martial.

**74.** A summary court-martial may try any offence punishable under any of the provisions of this Act :

Provided that when there is no grave reason for immediate action, and reference can without detriment to discipline be made to the officer empowered to convene a district court-martial for the trial of the alleged offender, an officer holding a summary court-martial shall not try without such reference any of the following offences, namely :—

(a) any offence punishable under sections 25, 27, clauses (a), (b) or (c), 33, 41 or 42, or

(b) any offence against the officer holding the court.

Persons triable  
by summary  
court-martial.

**75.** A summary court-martial may try any person subject to this Act and under the command of the officer holding the court, except an officer or warrant officer.

Sentences  
awardable by  
summary  
court-martial.

**76.** (1) A summary court-martial held by the commanding officer of a corps or department may pass



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pass any sentence which can be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding one year.

(2) A summary court-martial held by any other officer may pass any sentence which can be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding six months.

*Procedure at Trials by Court-martial.*

77. At every general, district or summary general court-martial the senior member shall sit as president. President.

78. Every general court-martial shall, and every district court-martial may, be attended by a judge advocate, who shall be either an officer belonging to the department of the Judge Advocate General in India, or, if no such officer is available, a person appointed by the convening officer. Judge Advocate.

79. A British officer of not less than four years' service, hereinafter called the superintending officer, shall be appointed to superintend the proceedings of every court-martial composed of Native officers which is not attended by a judge advocate. Superintending Officer.

80. (1) At all trials by general, district or summary general courts-martial, as soon as the court is assembled, the names of the president and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court. Challenges.

(2) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the court shall, in the absence of the challenged officer, decide on the objection.

(3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to

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to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(4) When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

Voting of  
members.

**81.** (1) Every decision of a court-martial shall be passed by an absolute majority of votes; and where there is an equality of votes, as to either finding or sentence, the decision shall be in favour of the accused.

(2) In matters other than a challenge or the finding or sentence, the president shall have a casting vote.

Oaths of  
president and  
members.

**82.** An oath or affirmation in the prescribed form shall be administered to every member of every court-martial and to the judge advocate or superintending officer before the commencement of the trial.

Oaths of  
witnesses.

**83.** Every person giving evidence at a court-martial shall be examined on oath or affirmation, and shall be duly sworn or affirmed in the prescribed form.

Summoning  
witnesses and  
production of  
documents.

**84.** (1) The convening officer, the president of the court, the judge advocate, or the commanding officer of the accused person, may, by summons under his hand, require the attendance before the court, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

(2) In the case of a witness amenable to military authority, the summons shall be sent to the officer commanding the corps, department or detachment to which he belongs, and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction

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jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with convenient certainty.

(5) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to any letter, postcard, telegram or other document in the custody of the postal or telegraph authorities.

(6) If any document in such custody is, in the opinion of any district magistrate, chief presidency magistrate, high court or court of session, wanted for the purpose of any court-martial, such magistrate or court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate or court may direct.

(7) If any such document is, in the opinion of any other magistrate or of any commissioner of police or district superintendent of police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause search to be made for and to detain such document pending the orders of any such district magistrate, chief presidency magistrate or court.

85. (1) Whenever, in the course of a trial by Commissions. court-martial, it appears to the court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Judge Advocate General in order that a commission to take the evidence of such witness may be issued.

(2) The

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(2) The Judge Advocate General may then, if he thinks necessary, issue a commission to any district magistrate or magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(3) When the witness resides in the territories of any prince or chief in India in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

(4) The magistrate or officer to whom the commission is issued, or, if he is the district magistrate, he or such magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under the Code of Criminal Procedure, 1898.

V of 1898.

(5) Where the commission is issued to such officer as is mentioned in sub-section (3), he may delegate his powers and duties under the commission to any officer subordinate to him whose powers are not less than those of a magistrate of the first class in British India.

(6) When the witness resides out of India, the commission may be issued to any British consular officer, British magistrate or other British official competent to administer an oath or affirmation in the place where such witness resides.

(7) The prosecutor and the accused person in any case in which a commission is issued may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the magistrate or officer to whom the commission is issued shall examine the witness upon such interrogatories.

(8) The prosecutor and the accused person may appear before such magistrate or officer by pleader or, except in the case of an accused person in custody,



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custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

(9) After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Judge Advocate General.

(10) On receipt of a commission and deposition returned under sub-section (9), the Judge Advocate General shall forward the same to the court at whose instance the commission was issued or, if such court has been dissolved, to any other court convened for the trial of the accused person; and the commission, the return thereto and the deposition shall be open to the inspection of the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the court.

(11) In every case in which a commission is issued under this section the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

*Explanation.*—In this section, the expression “Judge Advocate General” means the Judge Advocate General in India, and includes a Deputy Judge Advocate General.

86. (1) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

Conviction of one offence permissible on charge of another.

(2) A person charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave.

(3) A person charged before a court-martial with any of the following offences specified in section 31, that is to say, theft, dishonest misappropriation or conversion to his own use of property entrusted to him, or dishonestly receiving or retaining property in respect of which any of the aforesaid offences has been committed knowing or having reason to believe it

*(Chapter VIII.—Courts-martial.)*

it to have been stolen or dishonestly misappropriated or converted, may be found guilty of any other of these offences with which he might have been charged.

(4) A person charged before a court-martial with an offence punishable under section 41 or section 42 may be found guilty of any other offence of which he might have been found guilty if the provisions of the Code of Criminal Procedure, 1898, <sup>v of 1898.</sup> were applicable.

(5) A person charged before a court-martial with any other offence under this Act may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment.

Majority requisite to sentence of death.

87. No sentence of death shall be passed by any court-martial without the concurrence of two-thirds at the least of the members of the court.

*Evidence before Courts-martial.*

General rule as to evidence.

88. The Indian Evidence Act, 1872, shall, <sup>I of 1872.</sup> subject to the provisions of this Act, apply to all proceedings before a court-martial.

Judicial notice.

89. A court-martial may take judicial notice of any matter within the general military knowledge of the members.

Presumption as to signatures.

90. In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the civil or military service of the Government shall, on production, be presumed to have been duly signed by the person and in the character by whom and in which it purports to have been signed, until the contrary is shown.

Enrolment paper.

91. Any enrolment paper purporting to be signed by an enrolling officer shall, in proceedings under

*(Chapter VIII.—Courts-martial.)*

under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given, and of the enrolment of such person.

**92.** (1) If at any trial for desertion, absence without leave, overstaying leave or not rejoining when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorized absence, and refers in support thereof to any officer in the civil or military service of Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn until his reply is received.

Reference by  
accused to  
Government  
officer.

(2) The written reply of any officer so referred to shall, if signed by him, be received in evidence and have the same effect as if made on oath before the court.

(3) If the court is dissolved before the receipt of such reply, or if the court omits to comply with the provisions of this section, the convening officer may, at his discretion, annul the proceedings and order a fresh trial by the same or another court-martial.

**93.** (1) When any person subject to this Act has been convicted by a court-martial of any offence, such court-martial may inquire into, and receive and record evidence of, any previous convictions of such person, either by a court-martial or by a criminal court, and may further inquire into and record the general character of such person, and such other matters as may be prescribed.

Evidence of  
previous con-  
victions and  
general  
character.

(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, court-martial books or other official records; and it shall not be necessary to prove the signature to such certified extracts, nor shall it be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(3) At



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(3) At a summary court-martial the officer holding the trial may, if he thinks fit, record any previous convictions against the offender, his general character, and such other matters as may be prescribed, as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this section.

*Confirmation and Revision of Findings and Sentences.*

Finding and sentence invalid without confirmation. Power to confirm finding and sentence of general court-martial.

94. No finding or sentence of a general or district court-martial shall be valid except so far as it may be confirmed as provided by this Act.

Power to confirm finding and sentence of district court-martial.

95. The findings and sentences of general courts-martial may be confirmed by the Commander-in-Chief in India, or by any officer empowered in this behalf by warrant of the Commander-in-Chief in India.

96. The findings and sentences of district courts-martial may be confirmed by any officer having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such officer.

Contents of warrant issued under section 95 or section 96. Confirmation of finding and sentence.

97. A warrant issued under section 95 or section 96 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

98. (1) The finding and sentence of a summary general court-martial shall require to be confirmed by the convening officer—

- (a) in the case of the trial of an officer,
- (b) in the case of an acquittal or a sentence of death or transportation or imprisonment for a term exceeding two years, and
- (c) in any other case if so ordered by the said officer.

(2) Save as provided in sub-section (1), a sentence passed by a summary general court-martial shall not require to be confirmed, but may be carried out forthwith.

99. Subject



*(Chapter VIII.—Courts-martial.)*

**99.** Subject to such restrictions as may be contained in any warrant issued under section 95 or section 96, a confirming officer may, when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any less punishment or punishments to which the offender might have been sentenced by the court-martial :

Power of confirming officer to mitigate, remit or commute sentences.

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court.

**100.** (1) Any finding or sentence of a court-martial which requires confirmation may be once revised by order of the confirming officer; and on such revision, the court, if so directed by him, may take additional evidence.

Revision of finding or sentence.

(2) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided that, if a general court-martial, it still consists of five officers, or if a district court-martial, of three officers.

**101.** The finding and sentence of a summary court-martial shall not require to be confirmed, but may be carried out forthwith :

Finding and sentence of a summary court-martial.

Provided that, if the officer holding the trial is of less than five years' service, he shall not, except on active service, carry into effect any sentence until it has received the approval of an officer commanding not less than a corps.

**102.** The proceedings of every summary court-martial shall without delay be forwarded to the officer commanding the division or brigade within which the trial was held, or to the prescribed officer;

Transmission of proceedings of summary courts-martial.

and

(Chapter VIII.—Courts-martial. Chapter IX.—  
Execution of Sentences.)

and such officer, or the Commander-in-Chief in India, or the officer commanding the army in which the trial was held, may, for reasons based on the merits of the case, but not on any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the court might have passed.

Substitution  
of valid  
for invalid  
sentence.

103. Where a sentence passed by a court-martial which has been confirmed, or which does not require confirmation, is found for any reason to be invalid, the authority who would have had power under section 112 to commute the punishment awarded by the sentence if it had been valid may pass a valid sentence:

Provided that the punishment awarded by the sentence so passed shall not be higher in the scale of punishments than, or in excess of, the punishment awarded by the invalid sentence.

## CHAPTER IX.

### EXECUTION OF SENTENCES.

Form of  
sentence of  
death.

104. In awarding a sentence of death a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death.

Imprisonment  
to be in  
military  
custody.

105. Whenever any person is sentenced under this Act to simple imprisonment, such sentence shall be carried out by confinement in military custody.

Commence-  
ment of  
sentence of  
transportation  
or imprison-  
ment.

106. Whenever any person is sentenced under this Act to transportation or imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the president

OF,

*(Chapter IX.—Execution of Sentences.)*

or, in the case of a summary court-martial, by the court.

107. Whenever any sentence of transportation or rigorous imprisonment is passed under this Act, or whenever any sentence so passed is commuted to transportation or to rigorous imprisonment, the commanding officer of the person under sentence, or such other officer as may be prescribed, shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined, and shall forward him to such prison with the warrant :

Execution of sentence of transportation or imprisonment.

Provided that, in the case of a sentence of rigorous imprisonment for a period not exceeding three months, the confirming officer, or, in the case of a sentence which does not require confirmation, the court, may direct that the sentence shall be carried out by confinement in military custody.

108. Whenever, in the opinion of an officer commanding an army, division or independent brigade, any sentence or portion of a sentence of imprisonment cannot, for special reasons, conveniently be carried out in accordance with the provisions of section 105 or section 107, such officer may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place.

Execution of sentence of imprisonment in special cases.

109. Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil prison, a warrant in accordance with such order shall be forwarded by the prescribed officer to the officer in charge of the prison in which such person is confined.

Communication of certain orders to civil prison officers.

110. In executing a sentence of solitary confinement such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and, when the imprisonment awarded exceeds three months, the solitary confinement

Limit of solitary confinement.



(Chapter IX.—Execution of Sentences. Chapter X.—Pardons and Remissions.)

ment shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Instrument of  
corporal  
punishment.

111. Whenever any person is sentenced under this Act by a court-martial to corporal punishment, such punishment shall be inflicted on the bare back with the regulation cat.

## CHAPTER X.

### PARDONS AND REMISSIONS.

Pardons and  
remissions.

112. When any person subject to this Act has been convicted by a court-martial of any offence,—

- (a) the Governor General in Council, or
- (b) when the person has been convicted of any offence other than an offence punishable under section 41, the Commander-in-Chief in India or, in the case of a sentence which he could have confirmed or which did not require confirmation, the officer commanding the army, division or independent brigade in which such person, at the time of his conviction, was serving,

may—

- (1) pardon the person;
- (2) mitigate or remit the punishment awarded, or commute such punishment for any less punishment or punishments to which he might have been sentenced by the court-martial;
- (3) order the restoration to him of any service or other advantage forfeited under his sentence; or
- (4) re-admit him to the service when he has been dismissed therefrom :

Provided



*(Chapter XI.—Rules.)*

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court.

## CHAPTER XI.

## RULES.

**113.** (1) The Governor General in Council may <sup>Power to</sup> make rules for the purpose of carrying into effect the <sup>make rules.</sup> provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the discharge from the service of persons subject to this Act;
- (b) the amount and incidence of fines to be imposed under section 21;
- (c) the assembly and procedure of courts of inquiry, and the administration of oaths or affirmations by such courts;
- (d) the convening and constituting of courts-martial;
- (e) the adjournment, dissolution and sittings of courts-martial;
- (f) the procedure to be observed in trials by courts-martial;
- (g) the confirmation and revision of the findings and sentences of courts-martial;
- (h) the carrying into effect sentences of courts-martial;
- (i) the forms of orders to be made under the provisions of this Act relating to courts-martial, transportation or imprisonment; and
- (j) any matter in this Act directed to be prescribed.

(3) All

(Chapter XII.—*Property of Deceased Persons,  
Deserters and Lunatics.*)

(3) All rules made under this Act shall be published in the Gazette of India, and, on such publication, shall have effect as if enacted in this Act.

## CHAPTER XII.

### PROPERTY OF DECEASED PERSONS, DESERTERS AND LUNATICS.

Property of  
deceased  
persons and  
deserters.

**114.** The following rules are enacted respecting the disposal of the property of every person subject to this Act who dies or deserts :—

(1) The commanding officer shall secure all the moveable property that is on the spot, and cause an inventory thereof to be made, and draw any pay and allowances due to the deceased or deserter.

(2) In the case of a deceased person who has left in a Government savings bank (including any post office savings bank, however named) a deposit not exceeding one thousand rupees, the commanding officer may, if he thinks fit, require the secretary or other proper officer of the bank to pay the deposit to him forthwith notwithstanding anything in any departmental rules; and, after the payment thereof in accordance with such requisition, no person shall have any right in respect of the deposit except as hereinafter provided.

(3) In the case of a deceased person whose representative is on the spot and has given security for the payment of the regimental debts (if any) of the deceased, the commanding officer shall deliver over the property and the amount of the deposit (if any) received under clause (2) to that representative.

(4) In the case of a deceased person whose estate is not dealt with under clause (3), and in the case of any deserter, the commanding officer shall cause the property to be sold by public auction, and shall pay the regimental debts and other debts in camp or quarters (if any), and in the case of a deceased person the expenses of his funeral ceremonies, from the proceeds

(Chapter XII.—*Property of Deceased Persons,  
Deserters and Lunatics.*)

proceeds of the sale and the amount of the deposit (if any) received under clause (2).

(5) The surplus, if any, shall in the case of a deceased person be paid to his representative (if any), or in the event of no claim to such surplus being established within twelve months after the death, then the same shall be remitted to the prescribed person.

(6) In the case of the sale of the effects of a deserter, the amount remaining in the hands of the commanding officer shall be forthwith remitted to the prescribed person.

*Explanation.*—A person shall be deemed to be a deserter within the meaning of this section who has been convicted of desertion, or who has without authority been absent from duty for a period of sixty days and has not subsequently surrendered or been apprehended. Meaning of desertion.

**115.** Property deliverable and money payable to the representative of a deceased person under section 114 may, if the total value or amount thereof does not exceed one thousand rupees, and if the prescribed person thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title; and such delivery or payment shall be a full discharge to those ordering or making the same and to the Secretary of State for India in Council from all further liability in respect of the property or money; but nothing in this section shall affect the rights of any executor or administrator or other representative, or of any creditor, of a deceased person against any person to whom such delivery or payment has been made. Disposal of estate in proper y without production of probate, etc.

**116.** The provisions of section 114 shall, so far as they can be made applicable, apply in the case of a person subject to this Act becoming insane. Application of section 114 to lunatics.

CHAPTER XIII.



## CHAPTER XIII.

## MISCELLANEOUS.

*Military Privileges.*

Complaints  
against  
officers.

117. (1) Any person subject to this Act who deems himself wronged by any superior or other officer, may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the officer commanding the same.

(2) When the officer complained against is the officer to whom any complaint should, under sub-section (1), be preferred, the aggrieved person may complain to such officer's next superior officer.

(3) Every officer receiving any such complaint shall examine into it, and, when necessary, refer it to superior authority.

(4) Every such complaint shall be preferred through such channels as may be from time to time specified by proper authority.

Privileges of  
persons  
attending  
courts-martial.

118. (1) No president or member of a court-martial, no judge advocate or superintending officer, no party to any proceeding before a court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial, shall, while proceeding to, attending on or returning from a court-martial, be liable to arrest under civil or revenue process.

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial.

Exemption  
from arrest  
for debt.

119. (1) No person subject to this Act shall, so long as he belongs to His Majesty's Indian forces, be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue court or revenue-officer.

(2) The



*(Chapter XIII.—Miscellaneous.)*

(2) The judge of any such court may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section, and may, by warrant under his hand, discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no fee shall be payable to the court by the complainant.

**120.** Neither the arms, clothes, equipment, accoutrements or necessities of any person subject to this Act, nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue-officer, in satisfaction of any decree or order enforceable against him.

Property  
exempted  
from  
attachment.

**121.** Every person belonging to the Indian Reserve Forces shall, when called out for or engaged upon or returning from training or service, be entitled to all the privileges accorded by sections 119 and 120 to a person subject to this Act.

Application of  
the last two  
foregoing  
sections to  
reservists.

**122.** (1) On the presentation to any court by or on behalf of any person subject to this Act of a certificate, from the proper military authority, of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such person, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

Priority of  
hearing by  
courts of cases  
in which  
Native officers  
and soldiers  
are concerned.

(2) The certificate from the proper military authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No

*(Chapter XIII.—Miscellaneous.)*

(3) No fee shall be payable to the court in respect of the presentation of any such certificate, or in respect of any application by or on behalf of any such person for priority for the hearing of his case.

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for having been unable to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) If in any case a question arises as to the proper military authority qualified to grant such certificate as aforesaid, such question shall be at once referred by the court to an officer commanding a corps, whose decision shall be final.

*Deserters and Military Offenders.*

Capture of  
deserters.

**123.** (1) Whenever any person subject to this Act deserts, the commanding officer of the corps, department or detachment to which he belongs shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, to military custody.

(2) Any police-officer may arrest without warrant any person reasonably believed to be subject to this Act and to be travelling without authority, and shall bring him without delay before the nearest magistrate, to be dealt with according to law.

Arrest by  
military  
authorities.

**124.** (1) Any person subject to this Act who is charged with an offence may be taken into military custody.

(2) Any

*(Chapter XIII.—Miscellaneous.)*

(2) Any such person may be ordered into military custody by any superior officer.

(3) The charge against every person taken into military custody shall, without unnecessary delay, be investigated by the proper military authority, and, as soon as may be, either proceedings shall be taken for punishing the offence, or such person shall be discharged from custody.

**125.** Whenever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any magistrate or police-officer, such magistrate or officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his commanding officer. Arrest by civil authorities.

**126.** (1) When any person subject to this Act has been absent without due authority from his duty for a period of sixty days, a court of inquiry shall, as soon as practicable, be assembled and, upon oath or affirmation administered in the prescribed manner, shall inquire respecting the absence of the person, and the deficiency, if any, of property of the Government entrusted to his care, or of his arms, ammunition, equipments, instruments, clothing or necessaries; and, if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any; and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration. Inquiry on absence of person subject to Act.

(2) If the person declared absent does not afterwards surrender, or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

(3) If the person declared absent surrenders or is apprehended, the record or a copy thereof, purporting to bear the signature of the officer having the custody of the court-martial book, shall, on the trial of the  
the



*(Chapter XIII.—Miscellaneous. The Schedule.)*

the person for desertion, be presumptive evidence of the facts therein recorded.

*Repeal.*

Repeal.

**127.** The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof :

Provided that all warrants issued and persons enrolled or attested under the provisions of any of the said enactments shall be deemed to have been respectively issued, enrolled or attested under this Act.

## THE SCHEDULE.

## REPEAL OF ENACTMENTS.

*(See section 127.)*

1	2	3	4
Year.	No.	Short title.	Extent of repeal.
1869	V	The Indian Articles of War	The whole.
1875	V	The Unattested Sepoys Act, 1875.	Ditto.
1891	XII	The Amending Act, 1891	So much of section 2, sub-section (2), and the Second Schedule as relates to the Indian Articles of War.
1894	XII	The Indian Articles of War Amendment Act, 1894.	The whole.
1897	XIV	The Indian Short Titles Act, 1897.	So much of section 2 and the Schedule as relates to Act V of 1875.
1900	I	The Indian Articles of War Amendment Act, 1900.	The whole.
1901	IX	The Indian Articles of War Amendment Act, 1901.	Ditto.
1904	XIII	The Indian Articles of War Amendment Act, 1904.	Ditto.
1905	V	The Indian Articles of War Amendment Act, 1905.	Ditto.



# THE INDIAN ARMY ACT RULES

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# INDIAN ARMY ACT RULES.

## CHAPTER I.

### PRELIMINARY

**1. Short title.**—These rules may be cited as the “Indian Army Act Rules”.

**2. Definitions.**—In these rules, unless there is anything repugnant in the subject or context,—

(A) “Proper military authority“, when used in relation to any power, duty act or matter, means such military authority as, in pursuance of the Regulations of the Army or the custom of the service, exercises or performs that power or duty or is concerned with that act or matter.

(B) “The Act” means the Indian Army Act, 1911.

**3. Reports and Applications.**—Any report or application directed by these rules to be made to a superior authority, or proper military authority, shall be made in writing through the proper channel, unless the authority, on account of military exigencies or otherwise, dispenses with the writing.

**4. Forms in Appendices.**—(A) The forms set forth in the appendices to these rules, with such variations as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient, but a deviation from such forms will not, by reason only of such deviation, render any charge, warrant, order, proceedings or other document invalid.

(B) An omission of any such form will not, by reason only of such omission, render any act or thing invalid.

(C) The notes to, and instructions in, the forms will be considered as instructions which it is expedient to follow in all cases to which such notes and instructions apply, but shall not have the force of rules.

**5. Exercise of power vested in holder of military office.**—Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service.

**6. Cases unprovided for.**—In any case not provided for by these rules such course will be adopted as appears best calculated to do justice.



## CHAPTER II.

### ENROLMENT AND ATTESTATION

**7. Enrolling officers.**—The following officers shall be “enrolling officers” for the purposes of section 8 of the Act :—

- (i) All recruiting and assistant recruiting officers, including officers of the Royal Indian Navy or of the Royal Indian Air Force, who may be appointed as such.
- (ii) The Officer Commanding a Regiment, Battalion or Training or Regimental Centre.
- (iii) Any other officer or Extra Assistant Recruiting officer who may be appointed an “enrolling officer” by the Adjutant General in India.

#### NOTE.

1. For Forms of Enrolment, see First Appendix, page 334. The enrolling officer must himself sign the form.

2. For “Corps”, see I. A. A. 7(9) and r. 161 (A). Every person enrolled under the Act must belong to some corps or department from which he can only be transferred in accordance with the conditions of his enrolment (if they provide for such transfers) or with his own consent. He can be transferred, with or without his consent, from one portion of his corps or department to another.

3. Direct enrolment into the reserve of a corps can be effected either by the officer commanding the reserve centre or by the ordinary enrolling officers of the corps of which the reserve forms part.

**8. Persons to be attested.**—All combatants, and the following enrolled persons other than combatants, shall, when reported fit for duty, be attested as provided in section 12 of the Act :—

- (i) Enrolled personnel of the Indian Army Medical Corps except persons belonging to the general section of that corps.
- (i-a) Enrolled personnel of the Indian Pioneer Corps.
- (ii) Camel drivers of siladar camel units and artificers of the mechanical transport units of the Royal Indian Army Service Corps.
- (iii) Persons serving in any Corps or Department who may be selected for non-commissioned rank.

#### NOTE.

See I. A. A. 11. For persons to be enrolled as combatants and non-combatants, see R. A. I.

**9. Oath or affirmation to be taken on attestation.**—(A) The oath or affirmation to be taken on attestation will be in one of the following forms or in such other form to the same purport as the attesting officer ascertains to be in accordance with the religion of the person to be attested, or otherwise binding on his conscience.

#### Form of Oath

I.....do swear in the name of God that I will bear true faith and allegiance to the Constitution of India as by law established and that I will, as in duty bound, honestly and faithfully serve in the Regular Army of the Union of India and go wherever ordered by air, land or sea, and that I will observe and obey all commands of the President of the Union of India and the commands of any officer set over me even to the peril of my life.

## ENROLMENT AND ATTESTATION

### Form of Affirmation

I.....do solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will, as in duty bound, honestly and faithfully serve in the Regular Army of the Union of India and go wherever ordered by air, land or sea, and that I will observe and obey all commands of the President of the Union of India and the commands of any officer set over me even to the peril of my life.

(B) The oath or affirmation prescribed in this rule shall, whenever practicable, be administered by the commanding officer of the person to be attested (or in the presence of such commanding officer by a person empowered by him to administer it) in the manner described in section 12 of the Act. If it is not so administered, it may be administered by a magistrate or such officer as is hereinafter indicated; that is to say,—

A recruiting officer or assistant recruiting officer ;

The officer commanding a station.

Any gazetted officer of the Indian Posts and Telegraphs Department, in the case of persons enrolled in units of the Defence of India Corps (Post and Telegraph).

### NOTE.

(A) 1. For manner of administering, and taking the oath or affirmation, see notes to rr. 35 and 37.

(B) Sec I. A. A. 12 and notes. This paragraph prescribes the persons, in addition to the commanding officer, who can attest enrolled persons.

## CHAPTER III.

### DISMISSAL AND DISCHARGE

**10. Discharge not to be delayed.**—Every person enrolled under the Act shall, when entitled under the conditions of his enrolment to be discharged, be so discharged with all convenient speed.

#### NOTE.

1. For the prescribed authorities under I.A.A., 16, see r. 13 and table annexed thereto.

2. The discharge of a person who is under the conditions of his enrolment entitled to be discharged must be authorised and completed with all convenient speed by the proper authorities (see rr. 12 and 13). Until a person's discharge is completed, he remains subject to military law, but any undue delay in carrying out the discharge would give him good ground for complaint.

**11. Discharge certificates.**—(A) Every Viceroy's commissioned officer or warrant officer who is dismissed or discharged shall be furnished by his commanding officer with a certificate setting forth, in respect of such Viceroy's commissioned officer or warrant officer, the same matters as are required to be set forth in a certificate furnished under section 17 of the Act to a person enrolled thereunder who is dismissed or discharged. A certificate furnished under the provisions of this rule or of section 17 of the Act, as the case may be, is hereinafter called a "discharge certificate".

(B) A discharge certificate may be furnished either by personal delivery thereof by or on behalf of the commanding officer to the person dismissed or discharged or by its transmission by post to such person.

#### NOTE.

(A) 1. The proper form to use is I.A.F.Y.-1949, but any certificate which complies with I.A.A. 17 would be legally sufficient. See also R. A. I.

2. An Indian commissioned officer, not being an enrolled person, is not furnished with a discharge certificate.

(B) When a discharge certificate is sent by post, it should be registered.

**12. Date from which discharge, or dismissal otherwise than by sentence of court-martial, takes effect.**—(A) The dismissal of an Indian commissioned officer under section 13 of the Act or the retirement of such officer shall take effect from the date specified in that behalf in the notification of such dismissal or retirement in the Gazette of India.

(B) The dismissal of a person subject to the Act, other than an Indian commissioned officer, whose dismissal otherwise than by sentence of a court-martial is duly authorised, or the discharge of a person so subject whose discharge is duly authorised, shall be carried out by the commanding officer of such person with all convenient speed. The authority competent to authorise such dismissal or discharge may, when authorising the dismissal or discharge, specify any future date from which it shall take effect. Provided that if no such date is specified the dismissal or discharge shall take effect from the date on which it was duly authorised, or from the date on which the person dismissed or discharged ceased to do military duty, whichever is the later date.

#### NOTE.

(B) 1. See rr. 11 and 12 and notes. As to cashiering and dismissal awarded by court-martial, see r. 154 and notes.

2. In the case of a person serving in India with his unit it will generally be convenient for the authority authorising the dismissal or discharge not to specify any date but to leave the commanding officer to relieve the person of military duty on the most convenient date. In other cases it may sometimes be more convenient for the authority to specify the date and sometimes for him to leave it unspecified.

## DISMISSAL AND DISCHARGE

3. The competent authority cannot make the dismissal or discharge retrospective. Moreover he must, if he desires to specify a date, specify it at the time he authorises the dismissal or discharge. There is no legal objection to the "future date" being in suitable cases, e.g., "date of disembarkation"; but whenever possible a precise date should be specified. In the case of persons serving out of India at certain Imperial stations regard must be had to Army Department Notification No. 274, dated the 20th February 1925, and notes thereto on page 687. The discharge certificate should be furnished to the person on the date from which the dismissal or discharge takes effect. But see r. 11 and note.

4. If the dismissal or discharge of a person is found to be illegal, e.g., if it was not authorised by competent authority, that person will be entitled to pay from the date of his illegal discharge, although he performed no military duty from that date.

5. When a person has been duly dismissed or discharged in the manner prescribed by the Indian Army Act and Rules, he ceases to be subject to the Act and the dismissal or discharge cannot be cancelled, except with the consent of the person concerned.

**13. Authorities empowered to authorise discharge.**—(A) The retirement of an Indian commissioned officer will be authorised by the Central Government and notified in the Official Gazette.

(B) The causes of discharge of person subject to the Act, other than Indian commissioned officers, the authorities empowered to authorise the discharge and special instructions to be observed in each case are contained in the following table. In this table "Commanding Officer" means the officer commanding the corps or department to which the person to be discharged belongs and in the case of Viceroy's commissioned officers and warrant officers of the Indian Medical Department or the Indian Army Veterinary Corps, the Director-General of the Indian Medical Service or the Director, Veterinary Services in India, as the case may be. It also includes, as regards persons under their command, the officers specified in items (iii) to (xxvii) of rule 7. Any power conferred by this rule on any authority may be exercised by any higher authority.



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TABLE.

Class.	Cause of discharge.	Competent authority to authorise discharge	Special Instructions.
Viceroy's commissioned officers	I. (i) (a) On completion of the period of service or tenure specified in the Regulations for his rank or appointment, or on reaching the age limit, whichever is earlier, unless retained on the active list for a further specified period with the sanction of the Commander-in-Chief in India, or on becoming eligible for release under the Regulations.	Commanding Officer.	[See Note (1) below.]
	(b) At his own request on transfer to the pension establishment.	Commanding Officer.	
	I. (ii) Having been found medically unfit for further service.	Commanding Officer.	To be carried out only on the recommendation of an Invaliding Board.
	I. (iii) All other classes of discharge.	(a) In the case of Viceroy's commissioned officers granted direct commissions, during the first 12 months' service-District or Divisional Commander or Major-General Administration, Army/Command. (b) In case of Viceroy's Commissioned officers not covered by (a), serving in any Army or Command, under the India Command, the General Officer Commanding-	[See Notes (2) and (3) below.]

## DISMISSAL AND DISCHARGE

Class.	Cause of discharge.	Competent authority to authorise discharge	Special Instructions.
		in-Chief of that Army or Command, if not below the rank of Lieutenant-General, and if, the General Officer Commanding-in-Chief is below that rank, the Commander-in-Chief in India. (c) In any other case, the Commander-in-Chief in India.	
Warrant officers.	II. (i) (a) On completion of the period of service or tenure specified in the Regulations for his rank or appointment, or on reaching the age limit, whichever is earlier unless retained on the active list for a further specified period with the sanction of the Brigade Commander or on becoming eligible for release under the Regulations.	Commanding Officer.	[See Note (I) below.]
	(b) At his own request on transfer to the pension establishment.	Commanding Officer.	
	II. (ii) Having been found medically unfit for further service.	Commanding Officer.	To be carried out only on the recommendation of an Invaliding Board.
	II. (iii) All other classes of discharge.	Warrant Officers Class I—any officer not below the rank of Lieutenant-General appointed	In the case of Warrant Officers of the Indian Medical Corps and the Indian Army Veterinary Corps, the Brigade Commander or higher authority will, save

## INDIAN ARMY ACT RULES

Class.	Cause of discharge.	Competent authority to authorise discharge	Special Instructions
		by the Commander-in-Chief in Indian in this behalf; other Warrant Officers-Brigade Commander.	in exceptional circumstances exercise this power only in consultation with the Director of Medical Services in India, or Director, Veterinary Services in India, as the case may be. [See Note (4) below ]
Persons enrolled under the Act who have been attested.	III. (i) On fulfilling the conditions of his enrolment or having reached the stage at which discharge may be enforced.	Commanding Officer, except in the case of persons of the rank of havildar (or equivalent rank) otherwise than at their own request.	
	III. (ii) On completion of a period of Army Service only, there being no vacancy in the Reserve.	Commanding Officer (in the case of persons unwilling to extend their Army Service).	Applicable to persons enrolled for both Army Service and Reserve Service. (A person who has the right to extend his Army Service and wishes to exercise that right cannot be discharged under this head.)
	III. (iii) Not being a good rider.	Commanding Officer.	Applicable to persons enrolled as combatants in a mounted corps and whose duties require them to be mounted. Liability to discharge under this item ceases on completion of three years' service from date of enrolment.
	III. (iv) Having been found medically unfit for further service.	Commanding Officer.	To be carried out only on the recommendation of an Invaliding Board.
	III. (iv-a) At his own request before fulfilling the conditions of his enrolment.	Commanding Officer.	The Commanding Officer will exercise this power only where he is satisfied as to the desirability of sanctioning the application and that the strength of the unit will not thereby unduly reduced.
III. (v) All other classes of discharge.		Brigade Commander.	

## DISMISSAL AND DISCHARGE

Class.	Cause of discharge.	Competent authority to authorise discharge	Special Instructions.
Persons enrolled under the Act but not attested.	IV. All classes of discharge.	Commanding officer or an Officer commanding a Recruiting, Reception camp, or a Recruiting, Technical Recruiting, Deputy Recruiting or Deputy Technical Recruiting Officer.	In the case of persons requesting to be discharged before fulfilling the conditions of their enrolment, the Commanding Officer will exercise this power only where he is satisfied as to the desirability of sanctioning the application and that the strength of the unit will not thereby be unduly reduced. Recruits who are considered unlikely to become efficient soldiers will be dealt with under this item.

[See Note (5) below.]

## NOTES

(1) Commanding Officers who consider it desirable to retain on the active list a Viceroy's commissioned officer or a warrant officer who is desirous of continuing to serve beyond the date on which he would ordinarily be retired, should forward an application to that effect six months before that date. In all other cases discharge should be carried out in accordance with the provision of Rule 11.

(2) When application is made for the removal of a Viceroy's commissioned officer, reference should be made to the "Memorandum of the orders of His Excellency the Commander-in-Chief in India on the procedure to be observed in cases where the removal or retirement of officers holding Viceroy's commissions in the Indian Army, or Indian Medical Department or Indian Army Veterinary Corps, is for any cause considered necessary, without having recourse to trial by Court-Martial."

(3) The discharge certificate for a person discharged under item I (iii) will specify the particular cause of discharge—

*e.g.*, On resignation of his commission.

On transfer to the pension establishment for a specified reason.  
Compulsory, with gratuity.  
Services no longer required.

(4) The discharge certificate for a person discharged under item II (iii) will specify the particular cause of discharge—

*e.g.*, On resignation of his warrant.

On transfer to the pension establishment for a specified reason.  
Compulsory, with gratuity.  
Services no longer required.

(5) The discharge certificate for a person discharged under items III (v) and IV will specify the particular cause of discharge—

*e.g.* Irregular enrolment.

Compulsory transfer to pension establishment, or discharge with gratuity, for a special reason.

At his own request before fulfilling the conditions of his enrolment.  
Services no longer required.

On completion of Army Service only, there being no vacancy in the Reserve (in the case of persons willing to extend their Army Service).

Having reached the stage at which discharge may be enforced (in the case of persons of the rank of havildar, or equivalent rank, otherwise than at their own request.



## CHAPTER IV.

### INVESTIGATION OF CHARGES AND TRIAL BY COURT-MARTIAL

#### SECTION I.—INVESTIGATION OF CHARGES AND REMAND FOR TRIAL

##### *Power of Commanding Officer*

#### **14. Duty of Commanding-officer as to investigation of charge for offence.—**

Every commanding officer shall take care that a person under his command, when charged with an offence is not detained in custody for more than forty-eight hours after the committal of such person into custody is reported to him, without the charge being investigated, unless investigation within that period seems to him impracticable with due regard to the public service. Every case of a person being detained in custody beyond a period of forty-eight hours, and the reason thereof, shall be reported by the commanding officer to the general or other officer to whom application would be made to convene a general or district court-martial for the trial of the person charged.

Provided that Sunday, Good Friday and Christmas day shall be excluded in reckoning the periods of forty-eight hours specified in this rule.

##### NOTES

1. For definition of "commanding officer" see I.A.A. 7 (6).
2. This rule applies in the case of officers as well as soldiers.
3. This rule means that the investigation must be commenced within the time specified, though it may be impossible to complete it within that time.
4. The report should be made by letter and should refer specifically to the case, and state the reasons justifying the detaining of the accused in custody and preventing the investigation. The absence of an important witness would justify a remand; or the accused might be ordered to return to his duty with a distinct intimation that his case will be investigated so soon as the absent witness is available.

**15. Disposal of the charge or adjournment for taking down the summary of evidence.—**(A) Every charge against a person subject to the Act other than an Indian commissioned officer, shall be heard in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him, and to call any witnesses and make any statement in his defence.

(B) The commanding officer shall dismiss a charge brought before him if, in his opinion, the evidence does not show that some offence under the Act has been committed, and may do so if, in his discretion, he thinks the charge ought not to be proceeded with.

(C) At the conclusion of the hearing of a charge, if the commanding officer is of opinion that the charge ought to be proceeded with, he shall, without unnecessary delay, either—

- (1) dispose of the case summarily; or
- (2) refer the case to the proper superior military authority; or
- (3) adjourn the case for the purpose of having the evidence reduce to writing; or
- (4) if the accused is under the rank of warrant officer, order his trial by summary court-martial.

## INVESTIGATION OF CHARGES AND TRIAL BY COURT-MARTIAL

Provided that the commanding officer shall not order trial by summary court-martial without reference to the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender unless either—

- (i) the offence is one which he can try by summary court-martial without reference to that officer; or
- (ii) he considers that there is grave reason for immediate action and such reference cannot be made without detriment to discipline.

(D) Where the case is adjourned for the purpose of having the evidence reduced to writing, at the adjourned hearing the evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, and of any other person whose evidence appears to be relevant, shall be taken down in writing in the presence and hearing of the accused before the commanding officer or such officer as he directs.

(E) The accused may put questions in cross-examination to any witness, and the questions with the answers shall be added in writing to the evidence taken down.

(F) The evidence of each witness when taken down, as provided in (D) and (E), shall be read over to him, and shall be signed by him, or if he cannot write his name, shall be attested by his mark and witnessed. After all the evidence against the accused has been given, the accused will be asked: "Do you wish to make any statement? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence". Any statement thereupon made by the accused shall be taken down and read over to him.

(G) The evidence of the witnesses and the statement (if any) of the accused shall be recorded in the English language. If the witness or accused, as the case may be, does not understand English the evidence or statement, as recorded, shall be interpreted to him in a language which he understands.

(H) If a person cannot be compelled to attend as a witness, or if owing to the exigencies of service or on other grounds (including the expense and loss of time involved), the attendance of any witness cannot in the opinion of the officer taking the summary (to be certified by him in writing) be readily procured, a written statement of his evidence purporting to be signed by him may be read to the accused and included in the summary of evidence.

(I) Any witness who is not subject to military law may be summoned to attend by order under the hand of the commanding officer of the accused. The summons shall be in the form provided in the Third Appendix to these rules.

## NOTES

(A) 1. As to the mode of conducting the investigation, see Pt. I, ch. III, para 3, *et seq.* The evidence is not taken in writing; but see r. 15 (D) and note (c) below.

2. For the procedure in the case of an Indian commissioned officer, see r. 17.

3. Under I.A.A. 84 police and other civilian witnesses may be summoned to attend before a commanding officer, if it is considered desirable to compel their attendance by the service of a summons. A witness cannot be sworn or affirmed.

4. As to procedure where a criminal court and court-martial have each jurisdiction in respect of a civil offence, see I.A.A. 69 and 70 and notes and r. 167, see also R. A. I.

(B) 1. Every offence which a person subject to the Indian Army Act can commit is an offence under that Act, because it is either a military offence specified in the Act or a civil offence under s. 41.

## INDIAN ARMY ACT RULES

In deciding whether a charge under I. A. A. 39(r) should be proceeded with, the commanding officer must consider whether the alleged offence is, or is not, prejudicial to good order and military discipline; if, in his opinion, it is not, the charge must be dismissed.

He must also consider whether, having regard to the limitations of time prescribed by section 67 of the Act, the accused is liable to be proceeded against.

2. The commanding officer must dismiss the charge if there is no evidence of any offence under the Act, or if the accused has been previously acquitted or convicted of the alleged offence by any court, military or civil, or has been summarily dealt with under sections 20, 22, or 50 (2) (f) (I.A.A. 66) or the charge has previously been dismissed [r. 43A(1)]. He may dismiss it if he considers that the evidence is doubtful or the case trivial, or, in the exercise of his discretion, for any reason, *e.g.*, the good character of the accused.

3. No particular time is fixed within which a commanding officer must dispose of a case, so that he can always carefully consider a difficult case, but as a rule he should decide immediately, and should never delay for more than a day unless further evidence is required.

4. To make an entry against a man without punishment is a summary disposal and not a dismissal of the case.

(c) 1. There is no offence which a commanding officer is compelled by the Act or the Rules to send before a court-martial and each case should be considered on its merits. A commanding officer, however, has no power to punish an officer summarily [except by awarding a penal deduction under I.A.A. 50 (2) (f) to a Viceroy's commissioned officer] but he may remand an officer or warrant officer for disposal of a charge against him by a superior authority empowered to deal summarily with the case under s. 20 of the Act (*see* R. A. I.).

2. Except as provided in r. 17 a summary of evidence is to be made in every case where it is intended to remand the accused for trial by a general or district court-martial, or where the accused is an officer or warrant officer, for summary disposal of the charge by superior authority. In the case of a summary court-martial a summary of evidence need not be made, if it is intended to try the accused forthwith without reference to superior authority, either because the charge admits of this, or because of such grave necessity as is referred to in proviso (ii) to paragraph (c) of this rule. The offences, which a commanding officer must (except in cases of grave necessity falling under the above proviso) refer to superior authority before ordering trial by summary court-martial are detailed in section 74 of the Indian Army Act. All other offences can be tried by summary court-martial without such reference.

The summary of evidence, or a true copy thereof, should accompany the application for a general or district court-martial or summary disposal by superior authority, or for sanction to hold a summary court-martial when such sanction is necessary.

3. A person subject to the Indian Army Act has no right to elect to be tried by court-martial, except as provided in R. A. I. in the case of an officer or warrant officer.

4. A commanding officer disposes of a case summarily by awarding one of the punishments specified under section 20 of the Act, and which he can award (*see* R. A. I. and note to s. 20) or by awarding stoppages under section 50(2) (f) of the Act. If section 22 of the Act is applicable he may award a punishment mentioned in that section. A term of imprisonment awarded by a commanding officer should be awarded in days and will commence to run from the day of award. In law (in the absence of any special provision) there is no division of a day, and therefore, however, late in the day a prisoner is committed, his term of imprisonment is considered to have commenced at the first minute of that day, that is, the first minute after midnight. The sentence, therefore, will begin on the first minute of the day of award.

5. The award is considered final when the accused has been removed from the presence of the commanding officer. The commanding officer can at any time diminish the punishment before its completion, though he cannot add to it; *see* also R. A. I.

6. For "proper superior military authority", *see* rr. 2 and 3.

(d) 1. The adjourned hearing for the purpose of reducing the evidence to writing should if possible be held on the same day as the investigation. The commanding officer may direct another officer to take down the evidence, but an officer who has given material evidence at the investigation must not be appointed for this purpose. He should be an officer of some experience and with a good knowledge of the vernacular. The adjutant or the accused's squadron or company commander, should usually be detailed—(*see* also note to r. 33).

## INVESTIGATION OF CHARGES AND TRIAL BY COURT-MARTIAL

2. The summary cannot be taken on oath.

3. The accused cannot claim to be represented by counsel.

4. The evidence (so far as it is relevant and admissible) of every witness who gave evidence before the commanding officer must be taken down unless some good reason renders it not reasonably practicable to call him. The evidence of witnesses who did not appear before the commanding officer may also be taken for either prosecution or defence, so long as it appears to be relevant. In reducing the evidence to writing immaterial statements may be omitted and all hearsay and irrelevant matter should be excluded.

(E) The accused must be allowed to put any reasonable question to a witness, and especially to put questions respecting any variance between the evidence taken down and that given before the commanding officer.

(F) 1. The formal caution provided for in this paragraph must be given as soon as the evidence for the prosecution is closed. If it is necessary to take an additional summary, the accused must again be formally cautioned before he makes any further statement. The fact that he was duly cautioned should be recorded in the summary.

2. The statement of an accused person can only be given in evidence at the trial if it is voluntary (see Pt. I, ch. V, para. 28, *et seq.*). If it was made voluntarily, the mere fact that the caution was not given will not prevent it being used as evidence, but in no case must he be authoritatively called on to account for his proceedings, or required to make any statement, or cross-examined or asked any questions. Any such statement or the answers to any such questions will not be admissible in evidence against him.

3. The accused may call witnesses on his behalf, and their evidence will be taken down and included in the summary; but he is not bound to call a witness because such witness gave evidence before the commanding officer.

(H) 1. The certificate can conveniently be written below the signature of the absent witness on his written statement or abstract of evidence.

2. In many cases the provisions of this paragraph will effect a saving of time and expense, e.g., where a civilian witness is required to prove some fact not really in dispute. Such witness must, however, attend in person at the trial.

3. If it is found necessary to call at the trial some witness for the prosecution whose evidence is not included in the summary, an abstract of the evidence to be given by him should be supplied to the accused as early as possible; see r. 121.

(I) See I. A. A. 84 and form of summons, p. 397.

For power to dispense with paras. (D), (E), (F), (G) and (H), see r. 25.

For Memoranda for the guidance of officers taking down a summary of evidence, see pp. 401-404.

**16. Remand of accused.**—(A) The evidence and statement (if any) taken down in writing in pursuance of Rule 15 (in these rules referred to as the summary of evidence) shall be considered by the commanding officer, who thereupon shall either—

(1) remand the accused for trial by court-martial; or

(2) refer the case to the proper superior military authority; or

(3) if he thinks it desirable, re-hear the case and dispose of it summarily.

(B) If the accused is remanded for trial by court-martial, the commanding officer shall without unnecessary delay either assemble a summary court-martial (after referring to the officer empowered to convene a district court-martial or on active service a summary general court-martial when such reference is necessary) or apply to the proper military authority to convene a court-martial, as the case requires.

### NOTES

For memoranda for the guidance of commanding officers, see pp. 404-405.

For power to dispense with this rule, see. r. 25.

(A) 1. The evidence in the summary may not correspond with that given in the original investigation and the case may appear in a new aspect. The commanding officer



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may, therefore, decide to re-hear the case, and if he thinks fit, dispose of it summarily or try it by summary court-martial, if he has jurisdiction to do so. He can dismiss the case on re-hearing it.

2. Where precise information as to the locality of the offence is likely to be of use in understanding a case, a plan drawn to scale should accompany any summary of evidence submitted to superior authority. If it is considered necessary that matters of evidence should be shown on this plan (e.g., place where the body was found, in a murder case, or position of accused or a witness) the plan should be in duplicate, and these matters should only appear on one copy. If the plan is subsequently produced at the trial, the unmarked copy will be used, being put in and sworn to by the person who made it. These matters of evidence will then (if necessary) be marked on it, in accordance with the evidence given at the trial, and a note to that effect made in the proceedings.

(b) 1. Vernacular documents attached to a summary of evidence should be accompanied by a translation.

2. The delay in assembling a summary court-martial, etc., should not ordinarily exceed thirty-six hours, in calculating which Sunday and the other days mentioned in the proviso to r. 14 should be excluded.

**17. Procedure on charge against Indian commissioned officer.**—(A) Where an Indian commissioned officer is charged with an offence under the Act the investigation shall, if he requires it, be held, and the evidence taken in his presence in writing, in the same manner as nearly as circumstances admit as is required by rule 15 in the case of other persons subject to the Act.

(B) When an Indian commissioned officer is ordered to be tried by court martial, without any such taking of evidence in his presence, an abstract of the evidence to be adduced shall be delivered to him gratis, as provided in rule 22 (b).

## NOTES

For the power to dispense with observance of this rule, on the ground of military exigencies or the necessities of discipline, see r. 25.

(A) In the case of an Indian commissioned officer, as in that of other persons subject to the Act, the charge must come before his commanding officer in order that the latter may determine—whether the charge shall be dismissed or the case referred to a superior authority, for summary disposal under s. 20 of the Act or for trial by court-martial. By this provision the commanding officer can dispense with a formal and detailed investigation unless the accused officer demands one. It does not preclude the commanding officer from calling the officer before him and investigating the case as he may deem necessary. The officer can only demand formal investigation of his case by the commanding officer; he has no right under this rule to demand a court of inquiry.

(B) The convening officer will be responsible for the furnishing of this abstract [see also r. 22 (b)], which should not be in too much detail. It should always be delivered to the accused even though the subject matter of the charge may have been investigated by a court of inquiry; and if a court of inquiry has been held, the officer may have a copy of the proceedings [see r. 158 (M)].

**Framing Charges.**

**18. Charge-sheet and charge.**—(A) A charge-sheet shall contain the whole issue or issues to be tried by a court-martial at one time.

(B) A charge means an accusation contained in a charge-sheet that a person amenable to military law has been guilty of an offence.

(C) A charge-sheet may contain one charge or several charges.

## NOTES

(A) 1. The charge-sheet is usually prepared by the commanding officer or adjutant of the accused's unit; but in the case of a trial by a general or district court-martial r. 27 makes the convening officer responsible for its correctness. It must be signed by the officer in actual command of the unit to which the accused belongs; if trial is ordered, the order must be added at the foot and signed by—or by a staff officer "for"—the convening officer.

## INVESTIGATION OF CHARGES AND TRIAL BY COURT-MARTIAL.

For submission of certain charges to the Deputy or Assistant Judge-Advocate-General before trial see R. A. I.

2. There may be several charge-sheets, see r. 68; but the court can only deal with one charge-sheet at a time. When there are two or more charge-sheets, they must be consecutively numbered. For illustration of charge-sheet, see p. 347.

(B) The "charge" here referred to is the formal written charge upon which the accused is to be tried, as distinct from the charge or complaint (mentioned in rr. 14, 15 and 17) which give rise to the preliminary investigation.

(C) All charges (including alternative charges) must be consecutively numbered. As to insertion of charges in separate charge-sheets, see r. 68 and notes.

**19. Commencement of charge-sheet.**—Every charge-sheet shall begin with the name and description of the person charged, and state, in the case of an officer, his rank, name, and corps or department (if any), and in the case of a warrant officer, non-commissioned officer, soldier or other enrolled person, his number, rank, name and corps or department (if any). When the accused person does not belong to the regular forces the charge-sheet shall show by the description of him, or directly by an express averment, that he is amenable to Indian military law in respect of the offence charged.

### NOTES

1. The name or description of a person charged is immaterial so long as his identity is established; see also note to r. 21 (A) and rr. 40 (A) and 99. As an Indian commissioned officer, Viceroy's commissioned officer, warrant officer, or person enrolled in the regular Indian Army is always subject to the Indian Army Act, a statement in the charge-sheet that the accused belongs to a corps of the regular Indian Army will be sufficient to aver, and evidence of his so belonging will be sufficient to prove, that he is subject to that Act, without expressly adding words.

But if the accused is a civilian, or if his name and position are unknown, as may happen on active service, the charge-sheet must expressly aver that he was subject to the Indian Army Act, although it will be sufficient if the description of the accused is such as to imply that he was so subject. Evidence must in such a case be given to show that the persons falls under the liability clause of the Act [I. A. A.2 (1) (c)].

2. When a soldier holding an appointment is brought to trial by court-martial he is to be arraigned in his army rank with his appointment also designated (see R. A. I.), thus—

No.	Sepoy (Lance Naik)	Regiment.
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**20. Contents of charge.** (A) Each charge shall state one offence only, and in no case shall an offence be described in the alternative in the same charge.

(B) Each charge shall be divided into two parts—

(1) The statement of the offence; and

(2) the statement of the particulars of the act, neglect, or omission constituting the offence.

(C) The offence shall be stated, if not a civil offence, in the words of the Act, and if a civil offence, in such words as sufficiently describe that offence, but not necessarily in technical words.

(D) The particulars shall state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect, or omission is intended to be proved against him as constituting the offence.

(E) The *particulars* in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the latter particulars as is so referred to shall be deemed to form part of the first mentioned charge as well as of the other charge.

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(F) Where it is intended to prove any facts in respect of which any deduction from pay and allowances can be awarded as a consequence of the offence charged, the particulars shall state those facts, and the sum of the loss or damage it is intended to charge.

(A) 1. For forms of charges and preliminary note as to their use, see p. 335, *et seq.* See also Memoranda for guidance of courts-martial, p. 400, *et seq.*

The convening officer or, in the case of trials by summary court-martial, the commanding officer should seek the advice of the Deputy or Assistant Judge Advocate-General of the Command in any case where doubt exists as to the manner in which a charge should be framed. Charges for trial by general court-martial, and for indecency, fraud, theft (except ordinary theft), and civil offences (except simple assaults) should be referred to the Deputy or Assistant Judge Advocate-General concerned before trial; see R. A. I. and para. 10 (a) of Memoranda on p. 405.

2. A single charge disclosing two separate offences would be a bad charge, *e.g.*, a charge under I. A. A. 28 of being grossly insubordinate and insolent to his superior officer in the execution of his office, or under I. A. A. 31 of committing theft and dishonestly retaining Government property. But the use of the word "and" in the statement of offence is permissible where the charge discloses only one offence; *e.g.*, a charge under I. A. A. 35 of losing by neglect his equipments, clothing and regimental necessaries, because the accused is not charged with two offences, but with a single offence which is constituted by his having lost by neglect the various articles specified in the charge. A single charge under I. A. A. 28 of being grossly insubordinate or insolent to his superior officer in the execution of his office would be a bad charge, as two separate offences are described in the alternative in the same charge.

The rule is applicable to the particulars of a charge—*e.g.*, in a charge under I. A. A. 26 an averment that the accused quitted his post and remained absent for a specified period is not permissible, as the particulars disclose two separate offences. Similarly, in a charge, under s. 28 it is not permissible to aver two separate instances of insubordinate language, or in a charge under s. 37 false answers to two separate questions set out in the enrolment paper.

But the incidental mention of a separate offence in the particulars would not of itself invalidate the charge—*e.g.*, the mention in the particulars of a charge for assaulting a superior officer [s. 27 (d)] of grossly insubordinate language [s. 28 (a)], which accompanied a menacing gesture and showed its purport.

3. A single transaction, though technically disclosing more than one offence, should not, as a rule, be made the subject of more than one charge. For instance, where violence to a superior is accompanied by insubordinate language, the violence alone should be charged (assuming the evidence to be satisfactory), the language being admissible in evidence as to the intent.

On the other hand, if it seems desirable, a man can legally be charged in two separate charges with escape from arrest and absence without leave (following such escape).

(B) The statement of the particulars must support the statement of the offence; *e.g.*, if the statement of an offence laid under I. A. A. 31 alleged that the accused committed theft in respect of the property of Government, particulars stating that the accused dishonestly received, or was in unauthorised possession of, the property would not support the statement of the offence and the charge would be a bad charge, and the fact that the accused pleaded guilty to it would not affect the matter.

But a merely technical difference, *e.g.*, where the word assault is used in the statement of offence and the particulars disclose the use of criminal force, would not invalidate the charge, if the statement of offence and the particulars taken together supply the court and the accused with sufficient information of the nature of the offence which the court has to try and the accused to meet.

Where the statement of offence discloses an offence under the Act and one or more essential element of that offence are omitted from the particulars, *e.g.*, the word "dishonestly" in a charge of "dishonestly misappropriating" or the words "knowing it to be stolen" in a charge of receiving, the omission of that element from the particulars would not invalidate the charge, if taken as a whole, it informs the accused of the allegations he is called upon to meet, and the offence for which he is arraigned.

(c) When civil offences are tried by court-martial under I. A. A. 41, although technical terms need not be used in the charge, the essence of the civil offence must be expressed.

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(d) 1. The statement of particulars should state shortly in ordinary language what the accused is alleged to have done. All the ingredients necessary to constitute the offence should be specified; for example, if the charge is under s. 27, for disobeying a lawful command, the particulars must state the command, the rank and name of the superior officer who gave the command, and the fact that the accused disobeyed it.

Where a state of mind (e.g., intention or knowledge) is an essential ingredient of an offence, such state of mind should be stated in the particulars.—e.g., see illustrations Nos. 40 to 56 on pp. 358-363.

2. Vague statements must be avoided.—e.g., in a charge for using insubordinate language to his superior officer or for making a false statement to his commanding officer, it is not sufficient to state that the accused used insubordinate language or made a false statement well knowing the statement to be false; the words alleged to have been spoken or written must be set out in the particulars. Similarly, in a charge under s. 39 (h), it is not sufficient to state that the accused neglected to obey battalion orders by doing a particular act; the order it is alleged the accused neglected to obey must be set out in the particulars—see illustration No. 71 on p. 369.

(e) If in such cases the accused were to be acquitted of the first charge and convicted of the second charge, the conviction when recorded should specify the place and date mentioned in the first charge.

(f) Unless these facts are stated in the particulars and proved in evidence the court cannot award the punishment of stoppages under I. A. A. 43 (h) (iv) see note as to use of forms of charges (19, 20) p. 349.

As to evidence of value, see note to I. A. A. 50 and para 2(g) of Memoranda on p. 403.

**21. Validity of charge-sheet.** (A) A charge-sheet shall not be invalid by reason only of any mistake in the name or description of the person charged, if he does not object to the charge-sheet during the trial, and it is not shown that injustice has been done to the person charged.

(B) In the construction of a charge-sheet or charge there shall be presumed in favour of supporting the same every proposition which may reasonably be presumed to be impliedly included though not expressed therein.

## NOTES

(A) Although the trial of an offender is not invalid on account of a mistake in a name, such mistake are dangerous, in so far as they may lead to mistakes of substance. For instance, the accused might thus be mistaken for a man named in a certificate of previous conviction or in the sheet-roll, and a mistake of this description might cause the invalidity of the whole proceeding. Where, however, a man has been enrolled and is commonly known under an assumed name, he may be described by that name. The court has power to amend the charge by correcting under r. 40 or r. 99 any mistake in the name or description of accused.

(B) This paragraph must not be regarded as excusing any carelessness in preparing charge-sheets. It enables a court-martial, or any court before which the proceedings may come, to presume matters which, though not stated in the charge, are necessary to support its validity, and can reasonably be implied from it.

*Preparation for defence by accused person*

**22. Rights of accused to prepare defence.**—(A) An accused person for whose trial a court-martial has been ordered to assemble shall be afforded proper opportunity of preparing his defence, and shall be allowed free communication with his witnesses, and with any friend, defending officer, or legal adviser whom he may wish to consult.

(B) As soon as practicable after an accused has been remanded for trial by a general or district court-martial, and in any case not less than twenty-four hours before his trial, an officer shall give to him gratis a copy of the summary of evidence, or in the case of an Indian commissioned officer where there is no summary of evidence an abstract of the evidence, and explain to him his rights under these rules as to preparing his defence and being assisted or represented at



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the trial, and shall ask him to state in writing whether or not he wishes to have an officer assigned by the convening officer to represent him at the trial, if a suitable officer should be available. The convening officer shall be informed whether or not the accused so elects.

## NOTES

For power to dispense with this rule, see r. 25.

(A) 1. The freest communication which is consistent with the necessities of discipline and with the safe custody of the accused should be allowed. A failure to give the accused full opportunity of preparing his defence, and free communication with others for the purpose, may invalidate the proceedings. The accused, however, or the defending officer is not entitled to interview witnesses for the prosecution, without special authority. He is not bound to call as a witness everyone with whom he communicates as a possible witness on his behalf.

Neither the accused nor his defending officer or counsel should be permitted to interview for the purpose of general examination or interrogation any witness who has already given evidence for the prosecution at the taking of the summary of evidence, or whose evidence is included in the abstract of evidence as a witness for the prosecution unless the prosecution have, before the trial, definitely decided not to call such witness for the prosecution. If the accused or his defending officer or counsel desire to put any specific question or questions to such a witness for the prosecution with a view to ascertaining some specific fact or facts which it may be of assistance in the preparation of the defence to know, the Convening Officer should permit such question or questions to be put subject to any safeguard such as the presence of a representative of the prosecution as the Convening Officer may think fit. The converse holds good as regards interviews by the prosecution of witnesses for the defence.

2. As to defending officer and friend of accused, see r. 81; and as to counsel at general and district courts-martial, see rr. 82 to 87. As to the right of the accused to consult the judge-advocate on any questions of law or procedure, see r. 91.

(b) This duty must be properly performed by a responsible officer.

**23. Warning of accused for trial.**—(A) The accused before he is arraigned shall be informed by an officer of every charge on which he is to be tried; and also that, on his giving the names of witnesses whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly.

The interval between his being so informed and his arraignment shall not be less than twenty-four hours.

(b) The officer at the time of so informing the accused shall give him a copy of the charge-sheet and a vernacular translation of the same, and shall, if necessary, read and explain to him the charges brought against him.

(c) If he desires it, a list of the names, rank and corps (if any) of the officers who are to form the court, and where officers in waiting are named, also of these officers will, in courts-martial other than summary courts-martial, be given to the accused.

(d) If it appears to the court that the accused is liable to be prejudiced at his trial by any non-compliance with this rule, the court shall take steps and, if necessary, adjourn to avoid the accused being so prejudiced.

For power to dispense with this rule, see r. 25.

## NOTES

(A) 1. The duty of complying with the provisions of this rule will usually devolve upon the commanding officer in the case of summary and the prosecutor in the case of other courts-martial, who should, in any case, satisfy himself before the trial that it has been properly performed. Even if this rule is dispensed with under r. 25, the accused must have information of the charge, and opportunity of calling his witnesses.

2. As to arraignment, see r. 38 and notes.

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3. The duty of procuring the attendance of witnesses at general and district courts-martial devolves, under r. 123 (A) upon the commanding officer or convening officer or, after the assembly of the court, the president. The duty of procuring the attendance of witnesses at summary courts-martial devolves under r. 123 (B) upon the commanding officer.

The request of an accused person for witnesses to be called on his behalf should only be refused if it is quite clear that their evidence would be immaterial, or if their attendance cannot be secured within a reasonable time. If the request is refused, the refusal and reasons for it should be communicated to the court, who will deal with the matter under r. 23 (b) or 124. If an essential witness is absent, the court should always adjourn for the purposes of enabling him to attend or of procuring his examination on commission.

For form of summons to witnesses, see p. 397.

(B) A copy and translation of the charge-sheet must always be given, unless this rule has been dispensed with under r. 25. Even where it is so dispensed with, the charges must be clearly explained to the accused, as otherwise he may not have proper opportunity to prepare his defence. If the accused objects to the charge he will have an opportunity of making his objection when called on to plead (r. 39).

(C) This list should normally be delivered to the accused, irrespective of any demand on his part, as soon as the names of the members are known.

**24. Joint trial of several accused persons.**—Any number of accused persons may be charged jointly and tried together for an offence averred to have been committed by them collectively, and any number of accused persons, although not charged jointly, may be tried together for an offence averred to have been committed by one or more of them and to have been abetted by the other or others. Where two or more persons are charged jointly and tried together for an offence averred to have been committed by them collectively, or when two or more persons are tried together for an offence averred to have been committed by one or more of them and to have been abetted by the other or others, any one or more of such persons may at the same time be charged and tried for any other offence alleged to have been committed by him or them individually or collectively, *provided* that all the said offences are founded on the same facts, or form or are a part of a series of offences of the same or similar character. In any such case, notice of the intention to try the accused persons together shall be given to each of the accused at the time of his being informed of the charge, and any accused person may claim, either by notice to the authority convening the Court or, when arraigned before the Court, by notice to the Court, that he *or some other accused* be tried separately on one or more of the charges included in the charge sheet, on the ground that the evidence of one or more of the other accused persons proposed to be tried together with him will be material to his defence, or that otherwise he would be prejudiced or embarrassed in his defence. The Convening Authority or Court, if satisfied that the evidence will be material or that the accused may be prejudiced or embarrassed in his defence as aforesaid, and if the nature of the charge admits of this, shall allow the claim, and such accused person, or, as the case may be, the other accused person or persons whose separate trial he has claimed, shall be tried separately. Where any such claim has been made and disallowed by the authority convening the Court, or by the Court, the disallowance of such claim will not be a ground for refusing confirmation of the finding and/or sentence unless, in the opinion of the Confirming Authority, substantial miscarriage of justice has occurred by reason of the disallowance of such claim.

## NOTES

1. If two accused persons are charged separately with committing the same offence, they cannot, even at their own request, be tried together, because they have not been charged jointly.

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2. As to swearing the court to try several accused persons, see r. 75 and note, and as to form of proceedings in the case of a joint trial, see para. 28 of memoranda on p. 407.

If one accused pleads guilty and another not guilty, the trial of the latter up to and including the finding must be carried out before the court deal with the case of the accused who has pleaded guilty.

3. To admit of a joint charge and trial the accused must have acted together with the common purpose of committing the offence charged.

In the case of conspiring to cause or joining in a mutiny, the essence of the charge is combination between the accused. In such a case the nature of the charge may not admit of separate trial. In cases of doubt the accused should be tried separately.

Certain offences cannot from their nature be committed collectively. Such are intoxication, sentry sleeping upon or quitting his post, malingering, giving false evidence, cowardice, etc., and, speaking generally, all offences where a person's individual state of body or mind is of the essence of the offence.

*Exception from Rules.*

**25. Suspension of rules on the ground of military exigencies or the necessities of discipline.**—Where it appears to the officer convening a court-martial, or to the senior officer on the spot, that military exigencies, or the necessities of discipline, render it impossible or inexpedient to observe any of the Rules 15 (D), (E), (F), (G), (H), 16, 17, 22, 23, and 81 (B), he may, by order under his hand, make a declaration to that effect specifying the nature of such exigencies or necessities, and thereupon the trial or other proceedings shall be as valid as if the rule mentioned in such declaration had not been contained herein; and the declaration may be made with respect to any or all of the rules above in this rule mentioned in the case of the same court-martial.

Provided that the accused shall have full opportunity of making his defence, and shall be afforded every facility for preparing it which is practicable, having due regard to the said exigencies or necessities.

## NOTES

1. For form of declaration, see p. 377.

2. The power conferred by this rule should rarely be exercised except on active service and then only if absolutely necessary. Occasionally it may be necessary to resort to it in the case of embarkation or on the line of march, or possibly in an extreme case where the necessities of discipline require speedy trial and punishment.

In exercising the powers conferred by this rule, it is not necessary to dispense with all the provisions mentioned, e.g., it may be expedient to comply with the relevant provisions of r. 15 but not with r. 22.

If r. 15 (D), (E), (F), (G) and (H) are suspended, steps must be taken to inform the accused beforehand of the nature of the charge, the names of the witnesses and the effect of their evidence and the court must take care that the accused is not prejudiced by reason of the suspension, as, for instance, by not having received a summary of evidence.

The power of dispensing with r. 22 (A) is only intended to be exercised where it is necessary to try a person before he can communicate with a witness or friend at a distance. That rule should never be dispensed with except in extreme cases, and even then the accused must be allowed free communication with any witness or friend upon the spot.

R. 23 (C) should always be complied with and r. 23 (A) and (B), if not complied with within the time therein mentioned, should be complied with as long as possible before the court assemblies.

3. The accused will not have full opportunity of making his defence unless he receives in reasonable time the information mentioned above; and if he requests a reasonable adjournment in order to consider the witnesses' evidence, or to acquaint himself with the charge, or requests the postponement of the cross-examination of a witness the court should grant the request, and may adjourn for the purpose. A refusal might be held to be non-compliance with this proviso and thus to invalidate the trial. For the same reason the court, even in the absence of any such request, must take care that the accused is not prejudiced by being taken by surprise, either by the charge or the evidence of the witnesses.

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*Alternative Procedure.*

**26. Alternative procedure.**—When an accused person is remanded for trial by general or district court-martial the procedure before and during trial shall be that ordered in section 2 of this Chapter, and when an accused person is remanded for trial by summary court-martial that ordered in section 3 of this Chapter. Section 4 is equally applicable to all trials by general, district and summary courts-martial.

## NOTES

As to procedure in the case of trial by summary general court-martial, see section 5. rr. 137 to 151.

## SECTION 2.—GENERAL AND DISTRICT COURTS-MARTIAL.

*Convening the Court.*

**27. Convening of general and district courts-martial.**—(A) An officer before convening a general or district court-martial shall first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Act, and that the evidence justifies a trial on those charges, and if not so satisfied, shall order the release of the accused, or refer the case to superior authority.

(b) He shall also satisfy himself that the case is a proper one to be tried by the description of court-martial he proposes to convene.

(c) The officer convening a court-martial shall appoint or detail the officers to form the court and, may also appoint or detail such waiting officers as he thinks expedient. He may also, where he considers the services of an interpreter to be necessary, appoint or detail an interpreter to the court.

(d) The officer convening a court-martial shall send to the senior member of a court the original charge-sheet on which the accused is to be tried, the summary or abstract of evidence, and the order for the assembly of the court-martial.

## NOTES

(c) 1. With respect to the duties of the convening officer, see paras. 10—13 of memoranda pp. 405-406. The convening officer must ensure that he holds the necessary court-martial warrant empowering him to convene the description of court-martial that he considers appropriate.

2. Where the convening officer finds it impracticable to follow the ordinary rules as to appointing members from different corps [r. 30 (A)], or as to the rank of members [r. 30 (C)], he should state his opinion in the convening order.

The declaration as to military exigencies dispensing with certain rules (see r. 25) should be in a separate order. For form of declaration see p. 377.

3. Under I. A. A. 65 a court-martial which, after commencement of the trial, is reduced below the legal minimum, is dissolved. If, therefore, the trial is likely to be prolonged, the number of members detailed to serve should be in excess of the legal minimum required. Additional members should also be detailed to serve in doubtful or complicated cases.

4. It will usually be desirable, in the case of both general and district courts-martial, to add two or more waiting officers, in order to fill the places of officers retiring on challenge, or unable to attend owing to illness, etc.

5. In almost every case an interpreter in the language of the accused person will be necessary and should be detailed; see r. 77 and note.

(d) 1. Where several persons are to be tried separately by the same court, a copy of the convening order should be prepared for each accused. The original charge-sheet and convening order will subsequently be annexed to the proceedings.

2. The object of this paragraph is to enable the president of the court-martial to have a general knowledge of the case which is to come before the court. If any amendment in the charges appears to him to be required, he should communicate with the convening officer before the trial begins.



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3. The summary of evidence must be read in court if the accused pleads guilty, and may be used for determining the sentence r. 44 (B). It may be used at the trial for the purpose of showing that a witness has previously made a particular statement, or is giving evidence which differs from that given by him when the summary was taken. Any statement of the accused contained in the summary may be read to the court as evidence at the close of the prosecutor's case, but before reading such statement formal proof should be given that it was made voluntarily; see notes to r. 15 (F).

Except in the above instances the summary cannot be used as evidence.

4. During the trial the president should compare the evidence given by each witness with his statement contained in the summary of evidence and, if there is any material variation, should question him thereon.

Members of the court must take care that they are not unduly influenced by any statement appearing in the summary of evidence, though they will naturally have regard, in testing the credibility of a witness, to the fact that his evidence given at the trial is contradictory to his statement at the summary. It is usually expedient that the president alone should refer to the summary.

5. Where the accused pleads guilty, the summary of evidence is to be annexed to the proceedings [r. 44 (B) and Form of Proceedings p. 381]. If the accused pleads not guilty, the summary should be enclosed with the proceedings when sent to the confirming officer, but it should only be annexed to the proceedings if it has been used in evidence.

See r. 17 (B) as to an "abstract of evidence".

**28. Adjournment for insufficient number of officers.**—(A) If, before the accused is arraigned, the full number of officers detailed are not available to serve, by reason of non-eligibility, disqualification, challenge or otherwise, and if there are not a sufficient number of officers in waiting to take the place of those unable to serve the court shall ordinarily adjourn for the purpose of fresh members being appointed; but if the court are of opinion that in the interests of justice, and for the good of the service, it is inexpedient so to adjourn, they may, if not reduced in number below the legal minimum, proceed, recording their reasons for so doing.

(B) If the court adjourns for the purpose of the appointment of fresh members, whether under these rules or otherwise, the convening officer may, if he thinks fit, convene another court.

## NOTES

(A) 1. A general court-martial for which, say, seven members have been detailed, will not ordinarily begin the trial with less than seven. It may be assumed that the convening officer, in detailing seven members when five would have legally sufficed, had in view the possible prolongation of the trial or the desirability, in the circumstances of the case of submitting the issues to be decided to the arbitration of a larger tribunal. But under this rule the court may proceed unless reduced below the legal minimum (see notes to r. 27).

No court can be formed if the number of officers is, from whatever cause, below the legal minimum, nor can the proceedings even, if properly commenced, be continued. In either case a report of the circumstances must be made to the convening officer by the senior officer present.

2. For legal minimum, see I. A. A. 57 and 58.

(B) After the trial has once begun fresh members cannot be appointed in any circumstances; I. A. A. 65 (1).

**29. Ineligibility and disqualification of officers for court-martial.**—(A) An officer is not eligible for serving on a court-martial if he is not subject to military law.

(B) An officer is disqualified for serving on a general or district court-martial if he—

- (i) is the officer who convened the court; or
- (ii) is the prosecutor or a witness for the prosecution; or

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- (iii) investigated the charges before trial, or took down the summary of evidence, or was a member of a court of inquiry respecting the matters on which the charges against the accused are founded, or was the squadron, battery, company, or other commander, who made preliminary inquiry into the case, or was a member of a previous court-martial which tried the accused in respect of the same offence; or
- (iv) is the commanding officer of the accused, or of the corps to which the accused belongs; or
- (v) has a personal interest in the case.

(c) An officer is not eligible to serve on a court-martial unless he has held a commission during not less than the following periods, that is to say:—

- (i) if it is a district court-martial, two whole years;
- (ii) if it is a general court-martial, three whole years.

## NOTES

(A) "Eligible" is used with reference to an officer being subject to military law and of the necessary standing; that is to say, it refers to the status of the officer, and involves no personal considerations.

(B) 1. "Disqualified" is used with reference to the personal qualification of an officer. Except so far as is provided by r. 30, the corps to which an officer belongs is immaterial as regards his eligibility or qualification to serve on a court-martial.

2. "Personal interest". This will extend to even a remote or very small interest, e.g., in a charge relating to the theft of a sum of money, however small, belonging to an officers' mess, or a club every officer of that mess or club has a personal interest, and is therefore disqualified. A merely technical interest has been held to disqualify a person from holding a judicial position, e.g., a person who holds, as trustee or otherwise on behalf of others money in which he has no beneficial share himself, nevertheless has a personal interest in any charge relating to that money.

(C) Paragraph (c) (ii) is taken from I. A. A. 57. In addition, an officer should not be detailed to sit on any court-martial until regarded by his commanding officer as competent to perform so important a duty.

**30. Composition of court-martial.**—(A) A general court-martial shall be composed, as far as seems to the convening officer practicable, of officers of different corps or departments, and in no case exclusively of officers of the corps or department to which the accused belongs.

(B) Four at least of the members of a general court-martial shall be of a rank not below the rank of Captain.

(C) The members of a court-martial for the trial of an Indian commissioned officer shall be of a rank not lower than that of the Indian commissioned officer unless, in the opinion of the convening officer, officers of such rank are not (having due regard to the public service) available.

(D) In no case shall an officer under the rank of Captain be a member of a court-martial for the trial of a field officer.

## NOTES

(A) 1. There is no similar restriction as to the composition of district courts martial, which may therefore, when necessary, be composed wholly of officers of the corps or department to which the accused belongs; but where possible they should not be so composed.

2. The expression of the convening officer's opinion justifying a departure from the general rule should be inserted in the convening order.

(B) This is in effect, a statutory requirement, see I. A. A. 57.

(C) This paragraph does not reproduce any statutory provision.

The expression of the convening officer's opinion justifying a departure from the general rule should be inserted in the convening order.

**Procedure at Trial—Constitution of Court.**

**31. Inquiry by court as to legal constitution.**—(A) On the court assembling, the order convening the court shall be laid before them together with the charge-sheet and the summary of evidence or a true copy thereof, and also the ranks, names, and corps of the officers appointed to serve on the court; and it shall be the first duty of the court to satisfy themselves that the court is legally constituted; that is to say—

- (i) that, so far as the court can ascertain, the court has been convened in accordance with the Act, and these rules;
- (ii) that the court consists of a number of officers not less than the legal minimum, and, save as mentioned in Rule 28, not less than the number detailed;
- (iii) that each of the officers so assembled is eligible and not disqualified for serving on that court-martial;
- (iv) that in the case of a general court-martial the officers are of the required rank.

(B) The court shall, further, if it is a general or district court-martial to which a judge-advocate has been appointed, ascertain that the judge-advocate is duly appointed and is not disqualified for acting at that court-martial.

(C) The court, if not satisfied on the above matters, shall report their opinion to the convening authority, and may adjourn for that purposes.

**NOTES**

(A) 1. The inquiries necessitated by this and the following rule should be conducted in private. The court is not "open" at this stage, and the accused has not yet been brought before it.

2. The convening order, charge-sheet and summary or abstract of evidence will be in the possession of the senior member of the court: see r. 27 (d).

3. Where members are detailed by rank and corps and not by name, then only officers of the actual rank and corps stated in the convening order can serve as members.

4. It is essential that the court should ascertain, as far as lies in their power, that they have jurisdiction. For form of convening order, see p. 376.

In the case of a general or district court-martial, the order must be signed by the convening officer or "for" him by a staff officer or by a staff officer as such. The absence of a properly signed convening order is a fatal flaw although an order for trial is endorsed upon the charge-sheet. Apart from the specific requirements of this rule, the court must be satisfied that it is constituted strictly in accordance with the convening order.

5. The court, in considering whether they are convened in accordance with the Indian Army Act and Rules, can only look at the convening order. The convening officer is responsible that he holds the necessary court-martial warrant empowering him to convene the court, and the court are not required to satisfy themselves in this respect.

6. For legal minimum, see I. A. A. 57 and 58.

For rank of members of the court, see I. A. A. 57 and r. 30 and notes.

7. For eligibility and disqualification, see r. 29 and notes.

When a court of inquiry has been held respecting a matter upon which a charge against the accused is founded, the president should insert and sign the certificate shown in the note on pp. 377-378.

(B) See I. A. A. 78 and r. 89.

(Form of proceedings, p. 377.)

**32. Inquiry by court as to amenability of accused and validity of charge.**—(A) The court, when satisfied on the above matters, shall satisfy themselves in respect of each charge about to be brought before them—

- (i) that it appears to be laid against a person amenable to military law, and to the jurisdiction of the court, and

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- (ii) that each charge discloses an offence under the Act and is framed in accordance with these rules, and is so explicit as to enable the accused readily to understand what he has to answer.

(B) The court, if not satisfied on the above matters, shall report their opinion to the convening authority and may adjourn for that purpose.

## NOTES

(A) 1. The inquiry by the court under this and the preceding rule should be in closed court.

2. For amenability to military law, *i.e.*, to the Indian Army Act, see I. A. A. 2 and M.I.M.L., Pt. I, ch. I, paras. 9 and 10.

3. As to validity of charge, see rr. 18 to 21.

(Form of proceedings, p. 377.)

*Procedure at Trial.—Challenge and swearing.*

**33. Appearance of prosecutor and accused.**—When the court have satisfied themselves as to the above facts, they shall cause the accused to be brought before the court, and the prosecutor, who must be a person subject to military law, shall take his place.

## NOTES

The duty of appointing the prosecutor devolves on the convening officer who ordinarily selects the adjutant of the accused person's regiment. But the convening officer should not appoint himself to be prosecutor, and the prosecutor cannot confirm the finding and sentence of the court. In trials by general court-martial, and in complicated cases, a prosecutor should be specially selected for his experience and knowledge of military law, and should be, as far as possible, relieved from ordinary military duty, so that he may be enabled fully to master the case. In ordinary cases one of the officers mentioned in r. 29 (B) (iii) may suitably be detailed to act as prosecutor.

As to the duties of the prosecutor, see rr. 46 to 48, 66 and notes, and memoranda, pp. 408-410.

As to counsel, see rr. 82 to 87.

(Form of proceedings, p. 378.)

**34. Proceedings for challenges of members of court.**—The order convening the court and the names of the president and members of the court shall then be read over to the accused and he shall be asked, as required by section 80 of the Act, whether he objects to be tried by any officer sitting on the court. Any such objections shall be disposed of in accordance with the provisions of section 80 of the Act; provided that—

- (i) The accused shall state the names of all the officers to whom he objects before any objection is disposed of.
- (ii) The accused may call any person to give evidence in support of his objection. Such person may be questioned by the accused and by the court.
- (iii) If more than one officer is objected to, the objection to each officer shall be disposed of separately, and the objection to the lowest in rank shall be disposed of first; and on an objection to an officer, all the other officers present shall vote on the disposal of such objection, notwithstanding that objections have been made to any of those officers.
- (iv) When an objection to an officer is allowed that officer shall forthwith retire, and take no further part in the proceedings.
- (v) When an officer so retires, or is not available to serve owing to any cause which the court may deem to be sufficient, and there are any officers in waiting detailed as such, the president shall appoint one of such officers to fill the vacancy. If there is no officer in waiting available, the court shall proceed as directed by rule 28.



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- (vi) The eligibility, absence of disqualification, and freedom from objection of an officer filling a vacancy shall be ascertained by the court, as in the case of other officers appointed to serve on the court.

## NOTES

1. This rule must be read in connection with I. A. A. 80.

2. The accused must make each objection separately; he cannot object to the court collectively except upon a plea to the jurisdiction under r. 41. If the accused persists in objecting to the court collectively, the court should treat the objection as made to all the members individually, and the procedure provided by this rule should be strictly followed. In practice an objection to a member may be equivalent to a plea to the jurisdiction, as, for example when on the trial of a field officer one of the members is objected to because he is below the rank of Captain. In such a case the objection should be dealt with under this rule, although it might more properly have been raised under r. 41.

The accused has no right to object to the prosecutor or judge-advocate.

An officer objected to on the ground of personal enmity, prejudice, or malice, or for having formed and expressed an opinion on the case, should, unless the objection is obviously groundless, request and be permitted to retire. An officer successfully objected to on the ground of personal interest is disqualified from serving as a member [see r. 29 (b) (v) and notes].

The court may be closed to consider each objection.

3. Proviso (ii). The witnesses cannot be examined on oath, as the court are not yet sworn, but, r. 127 will substantially apply.

4. Proviso (iii) excludes an officer from voting on his own case, but all the other members present, *i.e.*, who have not retired upon objections to them being allowed, must vote on the disposal of the objection.

5. Proviso (v) prescribes the manner of filling a vacancy created either by a successful objection or through non-attendance of an officer detailed. Where any waiting members are detailed, it is the duty of the president to appoint one of those members to fill a vacancy. He is not required to take the first on the list; ordinarily he should select one of corresponding rank to the retiring or absent officer. If the president is himself successfully objected to, the senior remaining member will take his place (I. A. A. 77) and will then proceed to fill the vacancy in the court in the manner indicated above.

If there is no officer in waiting available and the court are reduced in number below the legal minimum, they must adjourn for the purpose of the appointment of fresh members; and though not so reduced, they should ordinarily adjourn unless they are of opinion that, in the interests of justice and for the good of the service, it is not expedient to do so.

6. Proviso (vi). It is desirable to ascertain before the accused is brought before the court whether a waiting member is eligible and qualified to serve if called upon. An objection to a waiting member called upon to serve will be dealt with immediately, if he is junior to any other officers who have been objected to; if he is not, the objections to junior officers will first be disposed of and he will have to vote on such objections.

In a doubtful case an objection should always be allowed. It is very important that the court should not only be impartial, but be believed by the accused and his comrades to be so.

(Form of proceedings, pp. 378-379.)

**35. Swearing or affirming of members.**—As soon as the court is constituted with the proper number of officers who are not objected to, or the objections to whom have been overruled, an oath or affirmation shall be administered to every member in one of the following forms or in such other form to the same purport as the court ascertains to be according to his religion or otherwise binding on his conscience.

*Form of Oath.*

"I.....swear by Almighty God that I will duly administer justice, according to the Indian Army Act, without partiality, favour or affection; and if any doubt shall arise, then, according to my conscience, the best of my

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understanding, and the custom of war in the like cases; and that I will not divulge the sentence of this court-martial until it shall be published by authority; and, further, that I will not disclose or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial in due course of law."

### *Form of Affirmation.*

"I....., solemnly affirm, in the presence of Almighty God, that I will duly administer justice, according to the Indian Army Act, without partiality, favour or affection; and if any doubt shall arise, then, according to my conscience, the best of my understanding, and the custom of war in the like cases; and that I will not divulge the sentence of this court-martial until it shall be published by authority; and, further, that I will not disclose or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or court-martial, in due course of law."

### NOTES

1. Christians and Sikhs are generally sworn, the former on the New Testament or some book containing it, and the latter on the Granth. Hindus and Mussalmans are generally affirmed. Jews are sworn on the Old Testament.
2. As to the person to administer the oath or affirmation, see r. 37 and notes.
3. As to swearing the court to try several persons, see r. 75.
4. A person taking the oath will hold the New Testament or, in the case of a Jew, the Old Testament, in his uplifted hand and will say or repeat the oath after the person administering it.
- The oath must be administered and taken with solemnity. It is not necessary to kiss the book. The members may be sworn separately or collectively.
5. If a person desires to be sworn in the Scottish form, no question as to his religious belief is to be asked nor is he required to hold or kiss the Bible while being sworn. He will be sworn standing and holding up his right hand, and the oath will commence in these terms "I swear by Almighty God as I shall answer to God at the Great Day of Judgment.....".
6. Affirmations are repeated by the person making affirmation after the person administering it.
7. In addition to providing a prescribed form of oath and affirmation, the Rule permits an oath or affirmation to be administered to the person to be sworn or affirmed in such form to the same purport as the court ascertains to be according to his religion or otherwise binding on his conscience.
8. The following is a translation into Urdu of the form of affirmation for use by courts-martial:—

Main..... Khudā-i-Taālā ko hāzīr-o-nāzīr jānkar imān so iqrār kartā hun (Parmeshwar ko jān mānkar dharm se bāchān detā hun) k'ih main āin-i-afwāj-i-Hind ke mutābiq baghair kisi tarafdāri yā riāyat yā himāyat ke hāq ke pāband rahkar, aur agar khi muāmala mashkuk hogā to apne zamir aur apni aql, aur fauji dastur, ke mutābiq jo is qism ke muqaddamāt men rāij ho, insāf karungā jub tak Sāhib-i-ikhtiyār hukm sādī; na karen, Court-Martial ke faisale ko ki i qar zāhir na karungā, jub tak kih mujhe kisi adalat ya Court-Martial men az rui-qanun iske mutaalliq gawāhi dene kā hukm na mile.

The following is a translation into Pushtu:—

Zah.....Pāk Khudāi Taālā, ta hazir au nazir ganram, au la imān sara iprār kawam che zah ba da āin-i-afwāj-i-Hind sara au be la tarfdāri yā riāyat yā khatirdāri na, insaf ba kawam, au ka tsa shak shubh rā ta māluma shi no zah ba khpul zamir an aql sara au har tarah che pa dāse muqaddamo khhe, da faui dastur wī, tsa ranga che khhai insaf bi kawam au da dagha Court-Martial hukm haargiz zāhir ba na kawam tar hagma pore che da hākim la tarafa zāhir na wī shawi au nor zah ba hargiz da dagha Court-Martial da yo member khabara ya khayāl che ta na wāyam, baghaif la hagma hāla na che la kuma adalata na ya Court-Martial na da quide muafiq da gawāhi da para talab ki.

Sikhs are sworn as follows:—

The "Granthi" or other person administering the oath holds a copy of the Sikh scriptures (the Granth) in his hands and the persons to be sworn also places his hands upon it. The latter then repeats after the former the words of oath. This begins:—

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"Main.....Sri Guru Granth Sahib ji ki saugand khakar kahata hun kih main", and proceeds as in the Urdu translation of the form of affirmation.

9. The oath or affirmation taken by members of the court implies that, as a general rule, the opinions of the individual members ought not to be stated, and consequently the court ought not to disclose whether the decision was unanimous or by a majority. The decision is the decision of the court as a whole, and the fact of its being unanimous or not is usually immaterial. The qualification at the end of the oath or affirmation, "unless required to give evidence thereof, etc.", only applies to such cases as those where members of the court are charged individually with partiality or bribery, and thus in a court of justice or a court-martial it would, or might, be necessary to make disclosures regarding individual votes to the court trying members so charged.

(Form of proceedings, p. 379.)

**36. Swearing or affirming of judge-advocate and other officers.**—After the members of the court are all sworn or have made affirmation, an oath or affirmation shall be administered to the following persons or such of them as are present at the court-martial, in such of the following forms as shall be appropriate, or in such other form to the same purport as the court ascertains to be according to the religion or otherwise binding on the conscience of the person to be sworn or affirmed :

(A) Judge-advocate.

*Form of Oath*

"I.....swear by Almighty God that I will not, upon any account whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless required to give evidence thereof by a court of justice or a court-martial, in due course of law, and that I will not, unless it be necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it shall be published by authority."

*Form of Affirmation.*

"I.....solemnly affirm in the presence of Almighty God that I will not, upon any account whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless required to give evidence thereof by a court of justice or a court-martial, in due course of law; and that I will not, unless it be necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it shall be published by authority."

(B) Officer attending for the purpose of instruction.

*Form of Oath*

"I.....swear by Almighty God that I will not divulge the sentence of this court-martial until it shall be published by authority, and, further, that I will not disclose or discover the vote or opinion of any particular member of this court-martial unless required to give evidence thereof by a court of justice or a court-martial, in due course of law."

*Form of Affirmation.*

"I.....solemnly affirm in the presence of Almighty God that I will not divulge the sentence of this court-martial until it shall be published by authority, and, further, that I will not disclose or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial, in due course of law."

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## (C) Shorthand writer.

*Form of Oath*

"I swear by Almighty God that I will truly take down to the best of my powers the evidence to be given before this court-martial and such other matters as I may be required, and will, when required, deliver to the court a true transcript of the same."

*Form of Affirmation.*

"I solemnly affirm in the presence of Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial, and such other matters as I may be required, and will, when required, deliver to the court a true transcript of the same."

## (D) Interpreter.

*Form of Oath*

"I swear by Almighty God that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial."

*Form of Affirmation.*

"I solemnly affirm in the presence of Almighty God that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial."

## NOTES

1. The notes to Rule 35 apply, *mutatis mutandis*, to this Rule.
2. The form of oath and affirmation for a witness are set out in Rule 126.
3. The accused has a right of objection to the shorthand writer or interpreter, who may be sworn at any time during the trial (r. 76); he has no right of objection to the judge-advocate or to the officers under instruction.

(Form of proceedings, p. 379.)

**37. Persons to administer oaths and affirmations.**—All oaths and affirmations shall be administered by a member of the court, the judge-advocate or some other persons empowered by the Court to administer such oath or affirmation.

## NOTES

Indians are generally sworn by a person professing their religion who may be either a member of the court or a person empowered by the court under this rule:—In the case of Sikhs this person is generally a *Granthi* who attends in court with a *Granth* for the purpose of swearing Sikh members and witnesses.

Affirmations may be administered by any of the persons mentioned in this rule. Their being of the same religion as the person affirmed is immaterial.

When a court-martial is composed of British officers it will generally be convenient for the judge-advocate to administer the oath or affirmation to the president and members, or if there is no judge-advocate, for the president to first administer it to the members and then he himself sworn or affirmed by one of them.

## PROSECUTION, DEFENCE AND SUMMING-UP

**38. Arraignment of accused.**—(A) After the members of the court and other persons are sworn or affirmed as above-mentioned, the accused shall be arraigned on the charges against him.



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(B) The charges upon which the accused is arraigned shall be read and, if necessary, translated to him, and he shall be required to plead separately to each charge.

## NOTES

1. The accused should be arraigned by the president or the judge-advocate (if any).

"Arraignment" consists of (1) calling upon the accused by his number (if any), rank, name and description as given in the charge-sheet and asking him "Is that your number, rank, name and unit (or description)"; (2) reading the charge to him; and (3) asking him whether he is guilty or not guilty.

Where two or more persons are jointly charged and tried for the same offence, each is separately arraigned. Where there are more charge-sheets than one against an accused, he must be arraigned and tried upon the first charge-sheet before arraignment upon the second or subsequent charge-sheets; see r. 68.

2. The charge-sheet, containing the charges as settled by the convening officer, will be in the possession of the president [r. 27 (D)], who will lay the charge-sheet before the court immediately before arraignment, and the charge sheet will then be annexed to the proceedings.

The plea of the accused must be taken on all the charges in a charge-sheet. This applies to alternative charges if the accused has been arraigned upon them [but see r. 42 (c)].

(Form of proceedings, pp. 379-380.)

**39. Objection by accused to charge.**—The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Act, or is not in accordance with these rules. The court, after hearing any submission which may be made by the prosecutor or by or on behalf of the accused, shall consider the objection in closed court and shall either disallow it and proceed with the trial, or allow it and adjourn to report to the convening authority; or, if they are in doubt, they may adjourn to consult the convening authority.

1. A charge laid under I. A. A. 35 (e) of losing by neglect the property of a comrade would not disclose an offence under that section of the Act.

2. See rr. 18-21.

3. For procedure where it appears that the accused is, by reason of insanity, unfit to take his trial, see r. 131.

(Form of proceedings, p. 380.)

**40. Amendment of charge.**—(A) At any time during the trial, if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, the court may amend the charge-sheet so as to correct that mistake.

(B) If on the trial of any charge it appears to the court at any time before they have begun to examine the witnesses, that in the interests of justice any addition to, omission from, or alteration in, the charge is required, they may report their opinion to the convening authority, and may adjourn, and the convening authority may either direct a new trial to be commenced, or amend the charge, and order the trial to proceed with such amended charge after due notice to the accused.

## NOTES

(A) A mistake in name or description will only be amended, if it is clear to the court that the accused is the person intended to be charged in the charge-sheet, and that, he is not prejudiced in his defence by the mistake having been made.

(B) 1. The court may act under this paragraph whether the objection to the charge is taken by the accused, or by the judge-advocate, or by a member of the court, and either before or after the arraignment of the accused; see rr. 32 and 39.

2. The witnesses—*i.e.*, the witnesses on the substance of the charge, not those who are called as to objections to the members or with respect to a special plea to the jurisdiction under r. 41.

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3. If the addition, omission, or alteration can be met by means of a special finding under r. 51 (b) (as, for instance, by omitting from the finding some of the articles alleged to have been stolen or lost by neglect, or by correcting a mistake in an immaterial date), it will not usually be necessary to have the charge amended; but if the date is material or if any addition requires to be made to the particulars of the charge, it will be safer for the court to adjourn and apply for the amendment. If the charge appears not to disclose an offence under the Act, the court must adjourn; see r. 39.

(Form of proceedings, p. 380.)

**41. Special plea to the jurisdiction.**—(A) The accused, before pleading to a charge, may offer a special plea to the general jurisdiction of the court; and if he does so, and the court consider that anything stated in such plea shows that the court have not jurisdiction, they shall receive any evidence offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and any address by the accused and reply by the prosecutor in reference thereto.

(B) If the court overrule the special plea, they shall proceed with the trial.

(C) If the court allow the special plea, they shall record their decision and the reasons for it, and report it to the convening authority and adjourn; such decision shall not require any confirmation, and the convening authority shall either forthwith convene another court for the trial of the accused, or order the accused to be released.

(D) If the court are in doubt as to the validity of the plea, they may refer the matter to the convening authority, and may adjourn for that purpose or may record a special decision with respect to such plea, and proceed with the trial.

## NOTES

(A) 1. A plea to the general jurisdiction, that is, to the right of the court generally to try the accused on any charge at all, is here kept distinct from any plea which relates only to the particular charge on which the accused is brought before the court. Under the former he may plead, for example, that the court is improperly constituted in respect of the number of the members, or that he is not amenable to the court, either as not being subject to military law or not subject to that description of court; as, for instance, in the case of a commissioned officer being brought before a district court-martial.

A plea relating to the particular charge, and raising the defence of previous conviction or acquittal by a court-martial or criminal court, summary punishment by the commanding officer, pardon of the offence or its condonation by the deliberate act of some superior authority or of the lapse of more than three years since the date of the offence (I. A. A. 67) will be raised by way of plea in bar of trial, under Rule 43.

2. Evidence must be taken on oath or affirmation.

(B) The confirmation of the finding, after a plea to the jurisdiction has been overruled will have the effect of confirming the decision of the court in over-ruling the plea. If, however, the confirming officer is of opinion that the plea is valid and should have been allowed, he must refuse to confirm the finding of the court, and another court may legally be convened.

(C) If the court allow the plea, the decision of the court cannot be overruled, but another Court may legally be convened.

(D) If a special plea to the jurisdiction were raised, e.g., on the ground that the accused was not subject to the Indian Army Act, and the court were in doubt as to the validity of the plea, they might record a special decision to that effect, and state that they had nevertheless decided to proceed with the trial. This procedure, in effect, transfers the decision as to the validity of the plea to the confirming officer, who should act as if the plea had been overruled.

(Form of proceedings, p. 380.)

**42. General plea "Guilty" or "Not guilty".**—(A) If no special plea to the general jurisdiction of the court is offered, or if such plea being offered, is overruled, or is dealt with by a special decision under sub-rule (D) of rule 41, the

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accused person's plea—"Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly either one or the other, a plea of "Not guilty")—shall be recorded on each charge.

(B) If an accused person pleads "Guilty", that plea shall be recorded as the finding of the court; but, before it is recorded, the president or judge-advocate, on behalf of the court, shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty, and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence that the accused ought to plead not guilty.

(C) Where an accused person pleads "Guilty" to the first of two or more charges laid in the alternative, the prosecutor may, after sub-rule (B) of this rule has been complied with by the court and before the accused is arraigned on the alternative charge or charges, withdraw such alternative charge or charges without requiring the accused to plead thereto, and a record to that effect shall be made upon the proceedings of the court.

(D) A plea of "Guilty" shall not be accepted in cases where the accused is liable, if convicted, to be sentenced to death, and where such plea is offered a plea of "Not guilty" shall be recorded and the trial shall proceed accordingly.

## NOTES

(A) If the accused pleads in some language not understood by the court or inarticulately, he will not have pleaded intelligibly, and a plea of "Not guilty" will be entered.

(B) 1. See, however, para. (D) of this Rule.

2. This direction is to prevent the accused pleading guilty under a misapprehension; e.g., a man charged with wilfully injuring government property may, under a misapprehension, plead guilty because the property has been actually injured, though not wilfully; or a man charged with receiving property, knowing it to have been stolen may, under a misapprehension, plead "Guilty" because the property was in fact stolen, though, when he received it, he did not know it to have been stolen. So, again, on a charge for desertion, the plea "Guilty but I intended to return" amounts to a plea of "Not guilty", as the intention not to return is generally an essential element in the offence of desertion. In each case the president must explain to the accused that he must plead "Not guilty".

3. A plea of "Guilty" is only to be taken to the extent to which it is pleaded. Thus a man arraigned upon a charge of losing by neglect a number of articles, who pleads guilty in respect of some of those articles only, must be taken to have pleaded "Not guilty" as regards the remaining articles. But if the court are satisfied of the justice of the course and the consent of the convening officer is signified by the prosecutor, they may accept the qualified plea of guilty and record a special finding accordingly. See Rule 51 (H) and note.

4. If the accused pleads guilty, a statement that the requirements of Rule 42 (B) have been complied with must be recorded.

5. It must be recollected that there is nothing untrue in a person pleading not guilty, even though he committed the offence, as the plea merely amounts to a claim, which he is entitled to make, that the charge against him shall be formally proved. Indeed; where the accused, while admitting the offence, wishes to show that it was committed under circumstances of great provocation and does not deserve severe punishment he must plead not guilty if he wishes to prove the existence of such provocation out of the mouths of witnesses for the prosecution, who would not be called to give evidence if he pleaded guilty [see, however, r. 44 (F) as to the power of the court.]

6. As to procedure where it appears at a later stage of the proceedings that the plea of guilty was pleaded under a misapprehension, see r. 44 (D).

(C) If the prosecutor adopts the procedure provided by this paragraph the accused will not be entitled to a verdict on the alternative charges, as he will not have been arraigned upon them. The convening officer must take care that the most serious of two or more alternative charges is placed first in the charge-sheet. As to the procedure to be followed in other cases where there are alternative charges see r. 44 (A).

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(d) This is intended to ensure that a person charged with an offence for which the death penalty can be awarded shall not be convicted without a full trial.

(Form of proceedings, p. 381.)

**43. Plea in bar.**—(A) The accused, at the time of his general plea of "Guilty" or "Not guilty" to a charge for an offence, may offer a plea in bar of trial on the ground that—

- (1) he has been previously convicted or acquitted of the offence by a competent criminal court or by a court-martial, or has been dealt with summarily under section 20 or 22 of the Act for the offence, or that a charge in respect of the offence has been dismissed as provided in sub-rule (B) of rule 15 ; or
- (2) the offence has been pardoned or condoned by competent military authority ; or
- (3) the time which has elapsed between the commission of the offence and the beginning of the trial is more than three years, and the limit of time for trial is not extended under section 67 of the Act.

(B) If he offers such plea in bar, the court shall record it as well as his general plea, and if they consider that any fact or facts stated by him are sufficient to support the plea in bar they shall receive any evidence offered, and hear any address made by or on behalf of the accused and the prosecutor in reference to the plea.

(C) If the court find that the plea in bar is proved they shall record their finding, and notify it to the confirming authority, and shall either adjourn, or if there is any other charge against the accused, whether in the same or in a different charge-sheet, which is not affected by the plea in bar, may proceed to the trial of the accused on that charge.

(D) If the finding that the plea in bar is proved is not confirmed, the court may be re-assembled by the confirming authority, and proceed as if the plea had been found not proved.

(E) If the court find that the plea in bar is not proved, they shall proceed with the trial, and the said finding shall be subject to confirmation like any other finding of the court.

## NOTES

(A) 1. The Indian Army Act provides that a man shall not be liable to trial for an offence of which he has been convicted or acquitted by a court-martial or by a criminal court, or for which he has been dealt with summarily (I. A. A. 66), or which was committed more than three years before the date of his trial, unless the offence was mutiny, desertion or fraudulent enrolment. Mutiny may be tried at any time, or desertion on active service. Desertion at other times, or fraudulent enrolment is not to be tried if the offender has served for 3 years in an exemplary manner in any portion of His Majesty's Regular Forces (s. 67).

The accused may also offer a plea in bar on the ground that a charge in respect of the offence has been dismissed as provided in Rule 15 (B), *i.e.*, that he has been acquitted, or the offence has been condoned, by his commanding officer.

2. It has long been recognised that a military offence can be condoned. For the purpose of barring a trial condonation means such conduct on the part of a competent authority—*i.e.*, an authority having power to determine that the charge should not be proceeded with—as is inconsistent with subsequently trying the offender, and as would make it inequitable to do so ; it must be a deliberate and intentional act, done with full knowledge of all material facts. If, with full knowledge of the facts, competent authority removes an officer, or allows him to resign, he should not afterwards be tried by court-martial for his offence. The fact that after trial, but before confirmation, the accused has been employed in active operations does not affect the legal validity of the sentence, but affords ground for pardon.



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(B) See note to r. 41 (A). The evidence will be taken on oath or affirmation.

(D) If the finding is confirmed, it amounts to an acquittal, and is final. It will be noted that the finding of the court upon a plea in bar of trial whether in favour of or against the plea, is subject to confirmation.

(Form of proceedings, p. 381.)

**44. Procedure after plea of "Guilty".—**(A) Upon the record of the plea of "Guilty", if there are other charges in the same charge-sheet to which the plea is "Not guilty" the trial shall first proceed with respect to those other charges, and, after the finding on those charges shall proceed with the charges on which a plea of "Guilty" has been entered; but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge, or may, instead of trying him, record a finding of "Guilty" upon any one of the alternative charges to which he has pleaded "Guilty" and a finding of "Not guilty" upon all the other alternative charges.

(B) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges) the court shall receive any statement which the accused desires to make in reference to the charge, and shall read the summary or abstract of evidence, and annex it to the proceedings, or if there is no such summary or abstract shall take and record sufficient evidence to enable them to determine the sentence, and the confirming officer to know all the circumstances connected with the offence. This evidence will be taken in like manner as is directed by these Rules in the case of a plea of "Not guilty".

(C) After evidence has been so taken, or the summary or abstract of evidence has been read, as the case may be, the accused may make a statement in mitigation of punishment, and may call witnesses as to his character.

(D) If from the statement of the accused or from the summary or abstract of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of "Guilty" the court shall alter the record and enter a plea of "Not guilty", and proceed with the trial accordingly.

(E) If a plea of "Guilty" is recorded, and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under (B) and (C) shall take place when the finding on the other charges in the same charge-sheet are recorded.

(F) When the accused states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same.

## NOTES

(A) An accused person cannot be found guilty upon more than one of two or more charges laid in the alternative, even if conviction upon one charge necessarily connotes guilt upon the alternative charge or charges.

Where two alternative charges are preferred and the accused pleads "Not guilty" to the charge which alleges the more serious offence and "Guilty" to the other, the court should try him under this paragraph as if he had pleaded "Not guilty" to both charges. Having regard to Rule 42 (c), the most serious of two or more alternative charges should always be placed first in a charge-sheet.

(B) For procedure where the statement of the accused is inconsistent with his plea, see para. (D) of this Rule and note (D) below.

(C) The accused will always be asked, in the case of a plea of "Guilty", whether he desires to call witness to character.

(D) 1. This would include a statement in mitigation of punishment under para. (C) as well as a statement with reference to the charge under para. (B) of this rule. For form to be followed see p. 381.

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2. The following examples are given of cases in which a plea of "Guilty" should be altered to a plea of "Not guilty" under this paragraph:—

- (a) Sepoy A, charged with desertion (not being desertion to avoid a particular service), states "I always meant to come back".
- (b) Sepoy B, charged with using criminal force to his superior officer, states "I only did it to defend myself after he had struck me".
- (c) Sepoy C, is charged with sleeping upon his post when a sentry and makes no statement with reference to the charge. On the reading of the summary of evidence, it is found that all the witnesses state that Sepoy C was beyond the confines of his post when found asleep.
- (d) Naik E, is charged with disobeying a lawful command given by Naik F, his superior officer, and makes no statement with reference to the charge. He calls a witness as to character, who states incidentally that Naik F is junior to the accused. In this case the action of the court in altering the plea of the accused would be founded upon the words "or otherwise" in this paragraph.

The test to be applied in all such cases is not whether the court believe the statement, but whether, if the statement were true, it would be a valid defence to the charge. In doubtful cases, the plea of "Guilty" should be altered to a plea of "Not guilty".

3. If the court failed to act under the provisions of this paragraph, the confirming officer should refuse confirmation and can order a new trial. If he confirms, the finding will be set aside.

4. Where the accused alleges provocation for the offence, it may be desirable to record a plea of "Not guilty" [see note (B) 5 to r. 42.]

As to special finding on a qualified plea of guilty, see Rule 51 (H) and note.

(F) Although, under this paragraph, the permission of the court is required to enable the accused to call witnesses in extenuation of the offence, and consequent mitigation of punishment, such permission should always be given.

(Form of proceedings, pp. 381-382.)

**45. Withdrawal of plea of "Not guilty".**—The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not guilty", and plead "Guilty", and in such case the court will at once, subject to a compliance with Rule 42(B), record a plea and finding of "Guilty", and shall, so far as is necessary, proceed in manner directed by Rule 44.

## NOTES

If the accused proposes to withdraw his plea of not guilty, the court must inform him of the general effect of his withdrawal, and of the difference in the procedure, in the same manner as if he pleaded guilty under Rule 42.

**46. Plea "Not guilty" and case for the prosecution.**—After the plea of "Not guilty" to any charge is recorded, the trial shall proceed as follows:—

(A) The prosecutor may, if he desires, and shall, if required by the court, make an opening address, and shall state therein the substance of the charge against the accused and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into any unnecessary detail.

(B) The evidence for the prosecution shall then be taken.

(c) If it should be necessary for the prosecutor to give evidence for the prosecution on the facts of the case, he shall give it after the delivery of his address (if any), and he must be sworn and give his evidence in detail.

(D) He may be cross-examined by or on behalf of the accused and afterwards may make any statement which might be made by a witness on re-examination.

## NOTES

(A) 1. As to the duties of the prosecutor, see r. 66 and notes, and memoranda pp. 408-410.

(2) In cases of complexity the prosecutor should always make an opening address, so that the members of the court may be enabled to understand the general nature of the allegations. He must be careful to refrain from making any assertions which he does not

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propose to substantiate by evidence. The address of the prosecutor may be in writing ; in such a case it should be read by him and handed to the court for attachment to the proceedings. If the address is made orally, see r. 78 (d).

(b) 1. For general provisions as to witnesses and evidence, see rr. 120 to 129. The evidence will be taken by question and answer, or the witness may be asked to tell his own story questions being subsequently asked to make good any omissions [see r. 78 (b)]. It is the duty of the prosecutor to conduct the examination of the witnesses for the prosecution and to see that all facts essential to constitute the offence are proved ; *e.g.*, on a charge laid under I.A.A. 36 (a) of making a false accusation against Havildar A, it must be proved:—

- (1) that the accused made the accusation in question against Havildar A ;
- (2) that it was false ;
- (3) that the accused made it knowing it was false.

The prosecutor must be careful, in examining his witnesses, to avoid putting leading or suggestive questions.

2. Documentary evidence will be read by the president or judge-advocate ; it will then be marked with a distinguishing letter or figure and attached to the proceedings. As a rule, it will be sufficient to attach copies of documents which must, however, be compared with the originals by the court and certified under the hand of the president to be true copies ; see note 2 to r. 56.

3. For the duty of the president, see r. 65 and note.

4. If the same person gives evidence in more than one case tried by the same court, he must be sworn (or affirmed) as a witness in each case, even if all such cases are tried on a single day.

(c) 1. The prosecutor should never give evidence for the prosecution, unless it be evidence of a merely formal nature, or for the purpose of producing documents which are in his possession. In exceptional cases, however (*e.g.*, active service), no prosecutor may be available except an officer who is a material witness as to the facts for the prosecution. In such a case the prosecutor must give his evidence before any other witness for the prosecution, and must not, after delivering an address, be allowed to swear generally as to the truth of the statements contained in such address.

2. When counsel appears on behalf of the prosecutor, paras. (c) and (d) of this rule do not apply.

(d) As to the general principles to be observed in cross-examination and re-examination, see Pt. 1, ch. V, paras. 97-111.

As to questions by the court, see rr. 128 and 129.

(Form of proceedings, pp. 382-383.)

**47. Close of case for the prosecution and procedure for defence where accused does not call witnesses.**—(A) At the close of the case for the prosecution, the accused shall be asked if he intends to call any witnesses to the facts of the case.

(B) If the accused states that he does not intend to call any witnesses to the facts of the case, the procedure shall be as follows:—

(i) If he is not represented by counsel or by an officer subject to military law :—

- (a) The accused may, if he wishes, call witnesses as to his character.
- (b) The prosecutor may make a final address for the purpose of summing up the evidence for the prosecution.
- (c) The accused may then make an address in his defence giving his account of the subject of the charges against him. The address may be made orally or in writing.

(ii) If he is represented by counsel or by an officer subject to military law:—

- (a) The accused may make a statement giving his account of the subject of the charge against him. This statement may be made orally or in writing but the accused shall not be sworn and no question may be put to him by the court or by any other person.

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- (b) The accused may, if he wishes, call witnesses as to his character.
- (c) The prosecutor may then make a final address.
- (d) Counsel or the defending officer, as the case may be, may then make a closing address.

### NOTES

(A) 1. It is open to the accused, his counsel or defending officer, at the close of the case for the prosecution, to submit that the evidence given for the prosecution has not established a *prima facie* case against him and that he should not, therefore, be called upon for his defence. The court will consider this submission in closed court and, if they are satisfied that it is well founded, must acquit the accused. The submission may be made in respect of any one or more charges in a charge sheet (see also note to r. 74).

2. This question as to the calling of witnesses will be put by the judge-advocate or, if there is none, by the president.

(B) 1. As will be noted from the succeeding paragraphs of this rule and Rule 48, the whole course of procedure in connection with the case for the defence will depend upon the answer of the accused to this question.

2. Witnesses to extenuating circumstances are witnesses to the facts of the case.

3. The fact that the accused has stated that he does not intend to call any witnesses to the facts of the case does not prevent him from doing so before the evidence for the defence is completed if, for example, unexpected witnesses become available.

As to re-calling of witnesses and the calling of witnesses in reply, see r. 129.

4. It is the duty of counsel for the defence or defending officer (if any) to conduct the examination of the witnesses for the defence.

As to counsel and defending officer, see rr. 81-87.

5. The utmost liberty consistent with the interests of parties not before the court and with the dignity of the court itself should be allowed to the accused in making his defence [see r. 66 (c)], and the court should, if necessary, adjourn to allow him time for its preparation.

The accused cannot give evidence on oath or affirmation as there is no provision of Indian military law corresponding to Rule 80 of the Rules of Procedure under the (British) Army Act.

6. The accused has the privilege of making statements in his address which are unsupported by evidence. Any statement of the facts, though not on oath, upon which the accused relies for his defence, must be taken into consideration by the court, who may draw their inferences from it [see note (A) 3 to r. 50.]

If made orally, it should be taken down verbatim, so far as it states facts which are within the personal knowledge of the accused and upon which he relies for his defence. If made in writing, it shall be read and attached to the proceedings. The accused cannot be questioned by the court or any other person upon his statement or address except when it is desired to supplement the defence or to bring out more clearly the points which the accused urges in his favour.

7. Counsel for the defence may not state as a fact any matter which has not been proved in evidence (note to r. 86), and the same restriction is placed upon a defending officer [r. 81 (c)].

8. The prosecutor's address may be in writing, and in such a case it should be read by the prosecutor and handed to the court for attachment to the proceedings. If the address is made orally; see r. 78 (D).

In summing up the evidence, the prosecutor must confine his remarks to the evidence given by the witnesses for the prosecution and defence; he must not strain or overstate that view of the facts which, it is his duty to present to the court; he must not state any new fact which has not been given in evidence. Any deviation in these respects on the part of the prosecutor, or any want of moderation, may lead to the setting aside of the proceedings, if it appears that injustice has been done thereby to the accused. It is the duty of the court, as far as possible, to prevent the prosecutor from transgressing in any of these respects.

9. For procedure when two or more persons are tried together, see r. 67.

(Form of proceedings, pp. 384-385.)



**48. Defence where accused calls witnesses.**—If the accused states that he intends to call witnesses to the facts of the case, the procedure shall be as follows:—

(i) If he is not represented by counsel or by an officer subject to military law:—

- (a) The accused may make an opening address giving his account of the subject of the charge against him. The address may be made orally or in writing.
- (b) The accused shall then call his witnesses including, if he so desires, any witnesses as to character.
- (c) After the evidence of all the witnesses has been taken, the accused may make a closing address.
- (d) The prosecutor may reply.

(ii) If he is represented by counsel or by an officer subject to military law:—

- (a) The accused may make a statement giving his account of the subject of the charge against him. The statement may be made orally or in writing but the accused shall not be sworn and no question may be put to him by the court or by any other person. If the accused makes no such statement, counsel or the defending officer (as the case may be) may make an opening address.
- (b) The accused shall then call his witnesses including, if he so desires, any witnesses as to character.
- (c) After the evidence of all the witnesses has been taken counsel or the defending officer (as the case may be) may make a closing address.
- (d) The prosecutor may reply.

1. The notes to the preceding rule should be referred to generally.

2. Counsel (note to r. 86) and defending officer [r. 81 (c)], are not permitted, in an opening address, to state as facts matters which they do not intend to prove in evidence.

(Form of proceedings, pp. 384-385.)

**49. Summing-up by judge-advocate.**—(A) The judge-advocate, if any, shall, unless both he and the court think a summing-up unnecessary, sum-up in open court the whole case.

(B) After the summing-up of the judge-advocate, no other address shall be allowed.

#### NOTES

(A) 1. The judge-advocate has a right to sum up when he considers it necessary or desirable. Generally speaking, a summing-up is unnecessary in simple cases; but even where the facts are simple, a legal direction is often necessary; see r. 91 (e). The judge-advocate should always sum up in cases involving fraud or indecency or where civil offences are charged, and he must be careful, where necessary, to advise the court upon the law relating to confessions (see Pt. I, Ch. V, paras. 26-35), to corroboration and to the evidence of accomplices (see Ch. V, para. 90).

In summing-up the evidence, the judge-advocate must be careful not to indicate to the court any opinion which he may have formed as to the facts. Under Rule 130 the summing-up may be given orally, but in practice it should invariably be in writing.

If a summing-up is considered unnecessary, a record to that effect must be made in the proceedings.

2. For the powers and duties of a judge-advocate, see r. 91.

(Form of proceedings, p. 386.)

#### *Finding and Sentence.*

**50. Consideration of finding.**—(A) The court shall deliberate on their finding in closed court.

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(B) The opening of each member of the court as to the finding shall be given by word of mouth on each charge separately.

## NOTES

(A) 1. See r. 69.

The president should initiate the deliberations of the court by a statement of the questions to be considered and the order in which they should be considered. If, for example, the charge is laid under I. A. A. 27 (e), he will ask them to discuss the bearing of the evidence upon the following questions: (a) was a command given? (b) was it a lawful command? (c) was it given by the superior officer of the accused? (d) was it disobeyed by the accused? (e) did the accused know that the person giving the order was his superior officer?

Similarly where the charge laid is under I. A. A. 39 (i), the question to be considered should be: (a) have the facts alleged in the particulars of the charge been proved in evidence? if they have, (b) do such facts amount to an act (or omission) prejudicial to good order and military discipline?

2. If the court is doubtful whether the actual offence charged is proved or whether the particulars of the charge have been satisfactorily established in evidence, they must consider their powers of making a special finding, either under I. A. A. 86 or under r. 51 (D).

3. The members of courts-martial must remember (1) that it is a fundamental maxim of law that an accused person is presumed to be innocent until he has been proved to be guilty, and (2) that their finding must be based upon the evidence given before them.

It should be remembered that the accused cannot give evidence on oath, and therefore any statement made by him must be carefully considered. Though not given on oath and subject to the test of cross-examination, it will often be of value, particularly if it is in any respect corroborated by evidence from other sources (see note 6 to r. 47).

4. At any time before the finding has been arrived at, the court may be reopened to enable a witness to be called or recalled and examined by them through the president or judge-advocate; see r. 129 (D).

5. As to form and record of finding, see r. 51 and notes.

(B) The opinions of members must be given orally. As to taking opinions see r. 73 and notes.

(Form of proceedings, p. 386)

**51. Form and record of finding.**—(A) The finding on every charge upon which the accused is arraigned shall be recorded and, except as mentioned in these rules, shall be recorded simply as a finding of "Guilty", or of "Not guilty" or of "Not guilty and honourably acquit him of the same".

(B) Where the court are of opinion as regards any charge that the facts proved do not disclose the offence charged or any offence of which he might under the Act legally be found guilty on the charge as laid, the court shall acquit the accused of that charge.

(C) If the court doubt as regards any charge whether the facts proved show the accused to be guilty or not of the offence charged or of any offence of which he might under the Act legally be found guilty on the charge as laid, they may, before recording a finding on that charge, refer to the confirming authority for an opinion, setting out the facts which they find to be proved, and may, if necessary, adjourn for that purpose.

(D) Where the court are of opinion as regards any charge that the facts which they find to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, they may, instead of a finding of "Not guilty", record a special finding.

(E) The special finding may find the accused guilty on a charge, subject to the statement of exceptions or variations specified therein.

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(F) Where there are alternative charges, and the facts proved appear to the court not to constitute the offence mentioned in any of those alternative charges, the court shall record a finding of "Not guilty" on that charge.

(G) If the court think that the facts proved constitute one of the offences stated in two or more of the alternative charges, but doubt which of those offences the facts do at law constitute, they may, before recording a finding on those charges refer to the confirming authority for an opinion, setting out the facts which they find to be proved and stating that they doubt whether those facts constitute in law the offence stated in such one or other of the charges and may, if necessary, adjourn for that purpose.

(H) In any case where the court are empowered by section 86 of the Act to find the accused guilty of an offence other than that charged, or guilty of committing an offence in circumstances involving a less degree of punishment, or where they could, after hearing the evidence, have made a special finding of guilty subject to exceptions or variations in accordance with sub-rules (D) and (E), they may if they are satisfied of the justice of such course, and if the concurrence of the convening officer is signified by the prosecutor, accept and record a plea of guilty of such other offence, or of the offence as having been committed in circumstances involving such less degree of punishment, or of the offence charged subject to such exceptions or variation.

Provided that failure to obtain the concurrence of the convening officer as aforesaid shall not invalidate the proceedings when confirmed notwithstanding such failure.

## NOTES

(A) 1. This includes alternative charges, except in the cases which come within Rule 42 (C) .

2. In the case of an acquittal on every charge, the president must date and sign the proceedings. The judge-advocate (if any) must also sign; see r. 52.

A finding of "honourable acquittal", which may be recorded in the case of non-commissioned officers and soldiers as well as officers, is incorrect unless the charge affects the honour of the person charged, and is generally inappropriate unless the conduct of the accused throughout the transactions investigated by the court has been irreproachable.

(B) 1. If, for example where a person is charged with dishonestly receiving property, knowing it to be stolen, and the facts show that, although the property was in fact stolen, the accused was unaware that it was stolen property, the court must acquit, as the accused would not have committed the offence charged.

2. For special findings in respect of the statement of offence, see I. A. A. 86.

(C) Before referring to the confirming authority under this rule, the court must have arrived at a decision as to the facts which they find to be proved and the opinion of the confirming authority will be sought as to whether, upon the facts so found to be proved, the accused can legally be found guilty.

The court cannot refer to the confirming authority for any opinion as to the facts, as to which they are the sole judges.

The reason for the reference should be recorded (see Variation, p. 387).

The opinion of the confirming officer should be read upon re-assembly of the court and attached to the proceedings.

(D) The special finding here referred to relates only to the particulars of the charge, and not to the statement of the offence, as to which see I. A. A. 86 and notes. Before recording a special finding under this paragraph, the court must be satisfied that the facts which they find to be proved, subject to certain exceptions and variations amount to the substance of the charge; otherwise they must acquit; e.g., on a charge against a soldier of losing by neglect a great-coat and a waistbelt, the court may properly find the accused "guilty of the charge except that he did not lose a waistbelt", but they could not legally find him "guilty of the charge except that he made away with and did not lose" the articles in question.

An immaterial variation of date may be made by special finding, but in cases of desertion or absence without leave the substitution of a date which would have the effect of lengthening the period of absence alleged in the charge would not be permissible.

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On a charge of using criminal force to his superior officer—Havildar A—by striking him with his fist in the face, the court could properly except the words “in the face”, but they could not make a special finding substituting Havildar B for Havildar A.

On a charge of dishonestly misappropriating Rs. 100, a special finding that the sum misappropriated was Rs. 50 would be permissible; but a special finding omitting from the particulars the word “dishonestly” would be tantamount to an acquittal.

(G) For general procedure, see note (C) above, and Variation, p. 387. When the court have decided to convict on one of two or more alternative charges, they will record a finding of “Not guilty” upon the other alternative charge or charges. [See para. (A) and note of this rule.]

(H) This sub-rule enables a court, if they are satisfied of the justice of the course and if the consent of the convening officer is signified by the prosecutor, to accept a qualified plea of guilty and to record a special finding. For example, if an accused charged with desertion pleads guilty to absence without leave, or if an accused charged with losing by neglect a number of articles pleads guilty in respect of some of these articles only, the court may accept such qualified plea and record a special finding accordingly.

(Form of proceedings, pp. 386-387.)

**52. Procedure on acquittal.**—If the finding on all the charges is “Not guilty” the president shall date and sign the finding and such signature shall authenticate the whole of the proceedings, and the proceedings upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.

## NOTES

This differs from the procedure under the (British) Army Act where an acquittal is announced in open court and the accused forthwith released. Under Indian military law a finding of acquittal by a general or district court-martial requires confirmation in the same manner as any other finding by such a court and is not valid until so confirmed.

(Form of proceedings, p. 386.)

**53. Procedure on conviction.**—(A) If the finding on any charge is “Guilty”, then, for the guidance of the court in determining their sentence, and of the confirming authority in considering the sentence, the court, before deliberating on their sentence, shall, whenever possible, take evidence of and record the general character, age, service, rank, and any recognised acts of gallantry or distinguished conduct of the accused any previous convictions of the accused either by a court-martial or a criminal court, any previous punishments awarded to him by an officer exercising authority under section 20 of the Act, the length of time he has been in arrest or in confinement on any previous sentence, and any military decoration, or military reward, of which he may be in possession or to which he is entitled.

(b) Evidence on the above matters may be given by a witness verifying a statement which contains a summary of the entries in the regimental books respecting the accused and identifying the accused as the person referred to in that summary.

(c) The accused may cross-examine any such witness, and may call witnesses to rebut such evidence; and if the accused so requests, the regimental books, or a duly certified copy of the material entries therein, shall be produced; and if the accused alleges that the summary is in any respect not in accordance with the regimental books, or such certified copy, as the case may be, the court shall compare the summary with those books or copy, and if they find it is not in accordance therewith, shall cause the summary to be corrected.

(d) When all the evidence on the above matters has been given the accused may address the court thereon and in mitigation of punishments.

## NOTES

(A) 1. The court will always take evidence as to character, unless the circumstances render it impracticable to do so, in which case they will record upon the proceedings the reasons for such impracticability.

2. Evidence upon the matters referred to in this rule should not be given by a member of the court.



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3. The court cannot take oral evidence that the accused is of bad character: this should be proved in the manner shown in para. (B) of this rule. But oral evidence of good character is always permissible; if the accused calls witnesses as to his good character, they may be cross-examined by the prosecutor with a view to testing their veracity and thereby indirectly bringing out evidence of bad character. Witnesses as to character can also be called during the hearing of the case for the defence and before the finding.

4. The court will also consider the length of time during which the accused has been in confinement awaiting trial upon the present charge or charges.

5. If by reason of the nature of the service of the accused, the finding of the court renders him liable to any exceptional punishment in addition to that to be awarded by the sentence of the court, the prosecutor should call the attention of the court to the fact, and the court should enquire into the nature and amount of such additional punishment.

6. For definition of "military reward", see I. A. A. 7 (15).

(b) Previous convictions of the accused will be proved by the production of a verbatim extract from the regimental books (I. A. F. D-905) duly completed by the officer-in-charge of these books; [see note (c) below and I. A. A. 91A (3) and (4)]. As to regimental books see R. A. I.; the term includes departmental books of the same nature as those maintained by corps, e.g., a sheet-roll or a court-martial book, but does not include departmental business books. If the accused challenges the correctness of the regimental books, see para. (C) of this rule. If there is any reason to doubt the correctness of the entry in the regimental books of a civil conviction, such conviction may be proved by an extract certified by the person having the custody of the records of the court in which the accused was convicted.

The witness producing the extract from the regimental books and the statement as to age, service, rank, etc., of the accused should be the adjutant or some other officer, and there is no objection to the prosecutor giving such evidence [see note (c) to r. 46]. He must be sworn as any other witness and may be cross-examined by the accused and questioned by the court.

(c) The copy of the material entries in the regimental book must be certified by the officer having custody of the original book [I. A. A. 91A (4)]; custody includes temporary custody for the purpose of the trial.

(Form of proceedings, pp. 387-388.)

**54. Sentence.**—The court shall award one sentence in respect of all the offences of which the accused is found guilty, and such sentence shall be deemed to be awarded in respect of the offence in each charge in respect of which it can be legally given, and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given.

## NOTES

1. This rule applies whether the charges on which the offender has been tried are contained in one or several charge-sheets.

2. As to postponement of sentence where several persons are tried separately for offences arising out of the same transaction, see r. 75 (n).

3. The sentence must be a sentence authorised by the Indian Army Act (see I. A. A. Ch. VI), e.g., a court-martial cannot award a sentence of confinement to lines, or sentence an offender to restore stolen property. But a court-martial may, under I. A. A. 126B, make a separate order for the disposal of property. Such an order should be recorded below the signature of the president to the sentence and should be separately dated and signed by the president.

4. For procedure in voting upon the sentence, see r. 73 and note.

5. The object of the latter portion of this rule is to prevent legal objection to the validity of the sentence. If, for example, an offender has been found guilty by a general court-martial on a charge of desertion, and also upon a charge of making away with his regimental necessaries, a sentence of transportation in respect of the first charge will be valid, although a sentence of rigorous imprisonment is the maximum sentence which could have been awarded upon the second charge.

6. Sentences, unless for one or more years exactly, should, if for one month or upwards, be recorded in months. Sentences consisting partly of months and partly of days should be recorded in months and days. A month means a calendar month.

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7. Even if the accused is considered by the medical officer who examines him before trial unfit to undergo rigorous imprisonment, the court can sentence him to it, as it is the duty of the medical officer of the prison, or place of military custody, to decide what severity of labour he can undergo. Sentences of simple imprisonment are inexpedient and inconvenient of execution.

(Form of proceedings, pp. 388-390.)

**55. Recommendation to mercy.**—(A) If the court make a recommendation to mercy, they shall give their reasons for their recommendation.

(B) The number of opinions by which a recommendation to mercy mentioned in this rule, or any question relative thereto, is adopted or rejected, may be entered in the proceedings.

## NOTES

1. A recommendation to mercy will be appended to the sentence; it forms part of the proceedings of the court.

2. In view of the discretion of the court in the matter of awarding sentence, a recommendation to mercy will be exceptional. It will usually be made only when the court, though unwilling to pass a lenient sentence lest the offence should be considered a venial one, think that, owing to the offender's character or other exceptional circumstances, he should not suffer the full penalty which the offence would ordinarily demand. As a rule the court will be able to adjust the sentence according to what, in their judgment, the offender should suffer having regard to the attendant circumstances. It is indisputable that offences are more effectually prevented by certainty than by severity of punishment.

3. As a recommendation to mercy is part of the proceedings, any expression of opinion in it in relation to the finding must be read with, and as part of, the finding. Accordingly, where in a recommendation to mercy a court express an opinion inconsistent with the guilt of the person under sentence, e.g., where the charge is for striking a superior, and the court state their opinion that the accused "did not intend to strike", it must be treated as an acquittal, the intent being an element of the offence.

(B) A recommendation to mercy is a matter which the court has to decide under r. 73 (A).

(Form of proceedings, p. 391.)

**56. Signing and transmission of Proceedings.**—Upon the court awarding the sentence, the president shall date and sign the sentence; and such signature shall authenticate the whole of the proceedings, and the proceedings upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.

1. It is essential that the date of the sentence should be inserted, as under I. A. A. 106 a term of transportation or imprisonment is reckoned to commence on the day on which the sentence and proceedings were signed by the president.

When, however, a president, after recording the finding and sentence, omits to either sign or date the proceedings, he can, even after confirmation, sign them and date his signature as of the true date of the decision.

The proceedings must not be signed by the members of the court other than the president.

2. The signature authenticates the whole of the proceedings, including the documentary evidence produced at the trial.

When an original document is produced in evidence, it will rarely be necessary to annex it to the proceedings. A certified copy should be produced to the court, together with the original, the former being attached to the proceedings, and the latter returned to its proper custodian. Documents, the actual appearance of which is material to the case (e.g., alleged forgeries), shall always be attached in original.

*Confirmation and Revision.*

**57. Revision.**—(A) Where the finding or sentence is sent back for revision under section 100 of the Act the court shall reassemble in closed court, but if the court is directed to take fresh evidence on revision such evidence must be taken in open court and in the presence of the accused.

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(B) Where the finding is sent back for revision and the court do not adhere to their former finding, they shall revoke the finding and sentence, and record a new finding, and if such new finding involves a sentence, pass sentence afresh.

(C) Where the sentence alone is sent back for revision, the court shall not revise the finding.

(D) After revision, the president shall date and sign the decision of the court and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.

(E) Upon receiving the proceedings of a general or district court-martial, whether original or revised, the confirming authority may confirm or refuse confirmation, or reserve confirmation for superior authority, and the confirmation, non-confirmation, or reservation shall be entered in and form part of the proceedings.

## NOTES

(A) 1. Indian military law as to revision differs from that contained in the (British) Army Act. Under the former, a finding of acquittal can be revised and the accused found guilty and sentenced, a sentence can be increased on revision, and evidence can (if so ordered) be taken on revision. None of these things can be done under the (British) Army Act.

2. A court cannot be re-assembled more than once for revision, whether of finding or of sentence.

3. The object of revision will generally be to cure defects in the finding or sentence, or both. The confirming officer, however, by partial confirmation or by exercising his powers under Rule 59 (A) or 61, can often correct mistakes made by the court, and thus obviate the inconvenience of re-assembling the court for revision.

If the sentence originally awarded by the court is wholly illegal, *e.g.*, a sentence of transportation awarded to a soldier by a district court-martial, or a sentence of reduction to the ranks awarded to a lance-naik, or a sentence of confinement to lines awarded to a soldier, it is null (see note to r. 61), and the court, on revision, may award any legal sentence; in such a case the confirming officer cannot pass a valid sentence; but see I. A. A. 103.

Where a special finding should have been recorded under I. A. A. 86 or Rule 51 (b), the finding should be sent back for revision. A confirming officer cannot substitute a special finding on any charge for the court's finding.

4. If a court bring in a finding of "not guilty" against the weight of the evidence, the court may be re-assembled and the confirming officer may give his views of the evidence, directing the attention of the court to any special points which they appear to have failed to appreciate.

A finding of insanity may also be sent back for revision.

5. A confirming officer cannot send back part of a finding or sentence; if he thinks that a part only requires revision, he must return the whole, pointing out the part which, in his opinion, requires revision.

6. The court should be re-assembled as soon as practicable.

If the court upon re-assembly is reduced, by death or otherwise, below the legal minimum [see I. A. A. 100 (3)], it cannot proceed with the revision, and the proceedings must be returned to the confirming authority. In such a case, as no revision has taken place, the original finding and sentence will stand and will be dealt with by the confirming authority.

7. Under I. A. A. 106, the term of transportation or imprisonment commences on the date of the original sentence.

(B) 1. Where the finding is sent back for revision and the court adhere to the finding, they can nevertheless revise the sentence.

2. If the revised finding is an acquittal or a finding of insanity, no sentence is involved. If a court, on revision, revoke their original finding on any charge, the original sentence automatically falls to the ground, and, if the revised finding entails a sentence, the court must pass sentence afresh; if the court omit to do so, the accused is not legally under

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any sentence and the confirming officer may return the proceedings with directions to the court to complete the revision and pass sentence. This will not be a second revision, which is prohibited by I. A. A. 100 (I).

3. If the original finding was acquittal and the revised finding is "Guilty", the court will (whether ordered to take fresh evidence or not) proceed as directed by Rule 53. The evidence referred to in para. (A) of the present rule is evidence of the facts relating to the charge, and must not be taken on revision unless specially ordered [I. A. A. 100 (I)].

(E) 1. See also I. A. A. 94-99A and rr. 59-62. As to confirmation of summary general courts-martial, see I. A. A. 98 and r. 148.

2. The minute of reservation should be entered in the proceedings.

(Form of proceedings, pp. 391-392.)

**58. Promulgation.**—The charge, finding, and sentence, and any recommendation to mercy shall, together with the confirmation or non-confirmation of the proceedings, be promulgated in such manner as the confirming authority may direct; and if no direction is given, according to the custom of the service. Until promulgation has been effected, confirmation is not complete and the finding and sentence shall not be held to have been confirmed until they have been promulgated.

## NOTE

1. For the date from which a sentence of cashiering or dismissal takes effect, see r. 154.

2. In the absence of any direction by the confirming authority, the usual custom of the service as to promulgation will be followed, but a written notice to the offender of the charge, etc., will be sufficient promulgation under this rule.

3. As to committal to a civil prison or to military custody of persons sentenced to transportation or imprisonment, see I. A. A. 107 and 108A: as to action in exceptional cases, see I. A. A. 108.

For forms of committal warrant, see pp. 412-413.

As to the suspension of sentences of transportation or imprisonment, see section 3 of the Indian Army (Suspension of Sentences) Act in Part III.

(Form of proceedings, p. 393.)

**59. Mitigation of sentence on partial confirmation.**—(A) Where a sentence has been awarded by a court-martial in respect of offences in several charges, and the confirming authority confirms the finding on some but not on all of such charges, that authority shall take into consideration the fact of such non-confirmation, and shall, if it seems just, mitigate, remit, or commute the punishment awarded according as seems just, having regard to the offences in the charges the findings on which are confirmed.

(B) Where a sentence has been awarded by a court-martial in respect of offences in several charges and has been confirmed, and any one of such charges or the finding thereon is found to be invalid, the authority having power to mitigate, remit, or commute the punishment awarded by the sentence shall take into consideration the fact of such invalidity, and if it seems just, mitigate, remit, or commute the punishment awarded according as seems just, having regard to the offences in the charges which with the findings thereon are not invalid, and the punishment as so modified shall be as valid as if it had been originally awarded only in respect of those offences.

## NOTE

(A) 1. As to the meaning of mitigation, remission and commutation, see notes to I. A. A. 99.

2. Where a soldier has been convicted of (1) desertion and (2) theft under I. A. A. 31 (d) and has been sentenced to transportation, and the confirming officer confirms the finding on the second charge but not that on the first charge, which alone justified the sentence of transportation, he is bound under this rule to commute the sentence at least to imprisonment the maximum sentence under I. A. A. 31. If, however, the confirming officer confirms the finding on the first charge but not that on the second, he may mitigate or commute it to some less punishment if he considers that a sentence of transportation on the charge of desertion alone is, in the circumstances, too severe.



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(b) 1. This paragraph gives to the authority prescribed under I. A. A. 112 similar powers to do after confirmation that which under para. (A) of this rule the confirming officer may do before confirmation. But it will be noted that the prescribed authority is only required to act under this paragraph where any one of the charges, or the finding thereon, is found to be invalid and has been set aside. The prescribed authority derives the ordinary powers of mitigation etc., from I. A. A. 112.

2. As to substitution of a valid for an invalid sentence, see I. A. A. 103 (2).

60. (Omitted.)

**61. Confirmation notwithstanding informality in, or excess of punishment.—**

(A) If the sentence of a court-martial is informally expressed, the confirming authority may, in confirming the sentence, vary the form so that it shall be properly expressed; and if the punishment awarded by the sentence is in excess of the punishment authorized by law, the confirming authority may vary the sentence so that the punishment shall not be in excess of the punishment authorized by law; and the confirming authority may confirm the finding and the sentence, as so varied, of the court-martial.

**NOTE**

1. The object of this rule is to prevent the proceedings of courts-martial from being rendered invalid when they cannot be sent back for revision without great inconvenience to the public service. It will not exonerate from blame the presidents and members of courts-martial who award sentences which are informal or in excess of their powers. If confirming officers decide to act under this rule, instead of ordering a revision of the sentence, they should call the attention of the members of the court to the informality or irregularity of the sentence.

2. The confirming authority cannot under this rule vary a sentence which is illegal in its character and therefore null, e.g., a sentence of imprisonment awarded by a district court-martial to a warrant officer, or a sentence of transportation awarded to a soldier by district court-martial, or a sentence of reduction to the ranks awarded to a lance-naik, or a sentence of confinement to lines awarded to a soldier. In such cases the court must be re-assembled for the purpose of passing a valid sentence.

(Form of proceedings, p. 392.)

**62. Member or prosecutor not to confirm proceedings.—**A member of a court-martial, or an officer who has acted as prosecutor at a court-martial, shall not confirm the finding or sentence of that court-martial, and where such member or prosecutor becomes confirming officer, he shall refer the finding and sentence of the court-martial to a superior authority competent to confirm the findings and sentences of the like description of court-martial.

**NOTE**

If proceedings are confirmed in error by an officer not having power to confirm, his act and the subsequent promulgation are null, and it is open to the proper authority to confirm.

*Proceedings of General and District Court-Martial.*

**63. Seating of members.—**The members of a court-martial shall take their seats according to their army rank.

64. (Omitted.)

**65. Responsibility of president.—**(A) The president is responsible for the trial being conducted in proper order, and in accordance with the Act, and will take care that everything is conducted in a manner befitting a court of justice.

(B) It is the duty of the president to see that justice is administered, that the accused has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a person under trial, or of his ignorance or of his incapacity to examine or cross-examine witnesses, or otherwise.

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## NOTE

(A) 1. The court should, always have at its disposal the Indian Army Act and Rules, Regulations for the Army in India, and any other official books or orders which are necessary for the purpose of its proceedings.

2. The president should be careful to safeguard the dignity of the court and the solemnity of its proceedings.

If any person, other than the accused, interrupts the proceedings, he should ordinarily be excluded from the court. The court have, however, further powers under Rule 136 for dealing with persons who interrupt their proceedings.

The trial of a person cannot proceed in his absence, even though he interrupts the proceedings.

(B) If the accused is not represented by counsel or defending officer, the president should assist him in putting forward his defence, and take care that he is not prejudiced by his inability to put proper questions to the witnesses or bring out clearly the points upon which he relies. If there is a judge-advocate he has a similar duty [r. 91 (G)]; but the presence of a judge-advocate does not relieve the president of his responsibility under this rule. If a witness gives evidence different from that given by him when the summary of evidence was taken, he should be questioned as to the difference.

The president should always put to the witnesses any questions which appear to him necessary or desirable for the purpose of eliciting the truth; see r. 129 and notes.

**66. Power of court over address of prosecutor and accused.**—(A) It is the duty of the prosecutor to assist the court in the administration of justice, to behave impartially, to bring the whole of the transaction before the court, and not to take any unfair advantage of, or suppress any evidence in favour of, the accused.

(B) The prosecutor may not refer to any matter not relevant to the charge or charges then before the court, and it is the duty of the court to stop him from so doing and also to restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor.

(C) The court shall allow great latitude to the accused in making his defence: he must abstain from any remarks contemptuous or disrespectful towards the court, and from coarse and insulting language towards others, but he may for the purposes of his defence impeach the evidence and the motives of the witnesses and prosecutor, and charge other persons with blame and even criminality subject. If he does so, to any liability which he may thereby incur. The court may caution the accused as to the irrelevance of his defence, but shall not, unless in special cases, stop his defence solely on ground of such irrelevance.

## NOTE

(A) 1. As to the duties of the prosecutor, see Memoranda pp. 408-410.

As to addresses by the prosecutor, see rr. 46, 47 and notes.

2. The prosecutor is an officer whose duty, it is to see that justice is done, not a partisan intent on securing a conviction independently of the justice of the case. He should therefore put before the court facts which show the true character of the offence, and must be careful to prove affirmatively any facts tending to show the innocence of the earlier termination of the absence, to tell the court the information which he possesses, of provocation which might mitigate punishment.

It occasionally happens that a soldier charged with desertion was to the knowledge of the prosecutor, arrested or rendered an involuntary absentee at a date earlier than the termination of his absence as alleged in the particulars of the charge. In such circumstances it is the duty of the prosecutor, although he has no direct evidence to prove the earlier termination of the absence, to tell the court the information which he possesses, and to invite them to act upon such information by recording a special finding under Rule 51 (b).

The prosecutor must not introduce matters of aggravation into the evidence against the accused unless they are relevant to the charge against him.

(B) As to relevancy, see Pt. I, ch. V, paras. 12-25. Generally speaking, anything which tends to show that the accused committed the offence charged, or to show the true character of the offence is relevant.

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(c) See also notes 5 and 6 to r. 47. If the accused charges other persons with blame or criminality, the court should caution him that he may be incurring a liability to be charged subsequently with knowingly by making a false accusation [I. A. A. 36 (a)].

The case must be very special indeed to justify the court in stopping the accused in his defence, or in excluding on the ground of irrelevancy, evidence offered by him, or to justify any further proceedings against him on account of his defence.

**67. Procedure on trial of accused persons together.**—Where two or more accused persons are tried together and any evidence as to the facts of the case is tendered by any one or more of them, the evidence and addresses on the part of or on behalf of all the accused persons shall be taken before the prosecutor replies, and the prosecutor shall make one address only in reply as regards all the accused persons.

**68. Separate charge-sheets.**—(A) The convening officer may direct any charges against an accused person to be inserted in different charge-sheets, and when he so directs, the accused shall be arraigned and until after the finding tried, upon each charge-sheet separately, and accordingly the procedure in Rules 38 to 51, both inclusive, shall, until after finding, be followed in respect of each charge-sheet, as if it contained the whole of the charges against the accused.

(B) The trials upon the several charge-sheets shall be in such order as the convening officer directs.

(C) When the court have tried the accused upon all the charge-sheets they shall, in the case of the finding being "Not guilty" on all the charges, proceed as directed by Rule 52, and in case of the finding on any one or more of the charges being "Guilty" proceed as directed by Rules 44 and 53 to 56, both inclusive, in like manner in each case as if all the charges in the different charge-sheets had been contained in one charge-sheet, and the sentence passed shall be of the same in one charge-sheet effect as if all the charges had been contained.

(D) If the convening officer directs that, in the event of the conviction of an accused person upon a charge in any charge-sheet, he need not be tried upon the subsequent charge-sheets, the court in such event may, without trying the accused upon any of the subsequent charge-sheets, proceed as before directed by (c).

(E) Where a charge-sheet contains more than one charge, the accused may, before pleading, claim to be tried separately in respect of any charge or charges in that charge-sheet, on the ground that he shall be embarrassed in his defence if he is not so tried separately; and in such case the court, unless they think his claim unreasonable shall arraign and try the accused in like manner as if the convening officer had inserted the said charge or charges in different charge-sheets.

(F) If a plea of "Guilty" to any charge in a charge-sheet has been recorded as the finding of the court, the provisions of Rule 44 (b) and (c) shall not be complied with until after the court have arrived at their findings on all the charge-sheets.

## NOTE

(A) 1. Most of the ordinary cases which come before courts-martial are so simple in their facts that an accused person is not likely to be embarrassed by being tried upon several charges at the same time. But if the charges are complicated, or if the alleged offences were committed at different times, or if different sets of witnesses are required to prove the different charges, embarrassment is likely to arise, and in such cases the convening officer should cause the charges to be inserted in separate charge-sheets, numbered consecutively in the order in which he directs them to be tried.

It is difficult to lay down for the guidance of convening officers any definite rules as to the placing of the charges in different charge-sheets; much will depend upon the circumstances of each particular case. But the following general principles may be laid down:—

(a) Alternative charges must not be placed in different charge-sheets.

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- (b) A series of offences forming part of one escapade should normally be placed in a single charge-sheet; e.g., escape from confinement followed by resistance to escort upon re-arrest and gross insubordination to the guard commander after re-committal to confinement. Multiplicity of charges arising out of the same transaction should, however, be avoided though in some cases it is necessary to allege a series of offences, e.g., to prove some particular intent, or to guide the court in determining the proper punishment to be awarded.
- (c) Repeated instances of offences of the same or similar character should be included in a single charge-sheet; e.g., a series of barrack-room thefts from comrades during a short space of time.
- (d) Offences of different descriptions should be entered in separate charge-sheets except where they form part of or are relevant to one transaction, or where the facts of each case are simple; e.g., where a soldier is charged with desertion and with using criminal force to his superior officer after he had been handed over by the escort, the charges should normally be inserted in separate charge-sheets, unless the facts are simple. But if immediately before the alleged desertion, the accused made away with his army clothing, a charge in respect of the latter offence is relevant to the intent of the accused in leaving his unit and should be inserted in the same charge-sheet as the charge of desertion.

Even if the convening officer has directed all charges to be inserted in a single charge-sheet, the accused under para. (E) of this rule has the right to apply for separate trial.

2. Where the accused is arraigned on separate charge-sheets, the court must arrive at their finding upon one charge-sheet before the next charge-sheet is proceeded with.

For form of proceedings, see para. 29 of Memoranda on p. 407.

3. Where any evidence given upon the trial of an accused on one charge-sheet is required to be given on the trial of the same accused person on a subsequent charge-sheet, it must be given afresh, but the witness giving such evidence need not be sworn again.

(b) Generally speaking, the convening officer will regulate the order for the trial of different charge-sheets according to the date of the respective offences. But where the gravity of the various offences differs, it may be desirable to insert the charge involving the gravest offence in the first charge-sheet, as, if the accused is convicted, he will be sufficiently punished without trying him in respect of the minor offences; and see para. (b) of this rule. Occasionally it will be desirable to direct that a charge which necessitates the calling of a large number of witnesses should be inserted in the first charge-sheet so that the attendance of such witnesses can be dispensed with after the trial on that charge-sheet has been completed.

(c) After the finding of the court upon all the charge-sheets has been arrived at, the procedure will be the same as if all the charges had been inserted in one charge-sheet. Unless, therefore, the convening officer directs that the accused need not be tried upon any subsequent charge-sheet, the court will not proceed to sentence until they have arrived at a finding on all the charge-sheets, and will then award one sentence in respect of them all.

(d) It will often be unnecessary, if the accused is convicted of a grave charge contained in one charge-sheet, to proceed with any other or minor offences contained in the other charge-sheets. On the other hand, it may be desirable to try the accused upon the other charge-sheets in order that a more severe sentence may be awarded, if justified.

The powers given to the convening officer under this paragraph cannot be exercised by the prosecutor on his own initiative or by the court.

(e) The court should always, unless they think the claim to be unreasonable, accede to a demand to be tried separately in respect of any particular charge.

(f) Under this paragraph, where an accused has pleaded guilty to a charge entered in one of several charge sheets, the summary or abstract of evidence relating thereto and any statement which he may make in mitigation of punishment will not be read or recorded until after the finding of the court on all the charge-sheets has been arrived at. But for this provision, the fair trial of the accused upon the other charge-sheets might be prejudiced, especially if he stated, in mitigation of punishment, anything which might point to his guilt on any charge in a charge-sheet which has not yet been tried.

**69. Sitting in closed Court.**—(A) When a court-martial sits in closed court on any deliberation amongst the members or otherwise, no person shall be present except the members of the court, the judge-advocate, and any officers under instruction; and the court may either retire, or may cause the place where they sit to be cleared of all other persons not entitled to be present.



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(B) Except as above-mentioned, all the proceedings, including the view of any place, shall be in open court and in the presence of the accused.

## NOTE

(A) If more convenient the court may withdraw for deliberation.

(B) 1. All the members of the court and the accused must be present at the "view": the prosecutor, counsel or defending officer should also be present.

2. This rule does not affect the power of the court to exclude any person, other than the accused, who interferes with the proceedings—a power which every court possesses as necessary for the proper conduct of its proceedings. A court-martial has inherent power to sit *in camera* if necessary for the proper administration of justice.

**70. Continuity of trial and adjournment of Court.**—(A) When a court is once assembled and the accused has been arraigned the court shall continue the trial from day to day and sit for a reasonable period on every day unless it appears to the court that an adjournment is necessary for the ends of justice, or that such continuance is impracticable.

(B) A court may adjourn from time to time, and from place to place, and may, when necessary, view any place.

(C) A court-martial, in the absence of a judge-advocate (if such has been appointed for that court-martial), shall not proceed, and, if necessary, shall adjourn.

(D) The senior officer on the spot may also, for military exigencies, adjourn or prolong the adjournment of the court.

(E) If the time to which an adjournment is made is not specified, the adjournment shall be until further orders from the proper military authority; and, if the place to which an adjournment is made is not specified, the adjournment shall be to the same place or to such place as may be specified in further orders from the proper military authority.

## NOTE

(A) 1. It is very important that a trial, once begun, should proceed without interruption to its conclusion. This rule, therefore, requires the court to sit from day to day unless an adjournment is necessary for the ends of justice.

2. Apart from specific provisions under the Rules, an adjournment should be allowed for obtaining the opinion of the confirming authority or of the Deputy or Assistant Judge Advocate General of the command on any point of law or procedure for enabling the accused to prepare his defence, the prosecutor to prepare his reply or the judge-advocate to prepare his summing-up.

The court should not, as a rule, permit an adjournment to enable the prosecutor to call new witnesses, unless the necessity for their presence at the trial could not reasonably have been foreseen. The court should adjourn if they consider that the accused has not had sufficient opportunity for procuring the attendance of any witnesses whom he desires to call, or where it would be unjust to the accused not so to adjourn.

The reasons for any adjournment must be entered in the proceedings (see Variations, p. 383), and either announced in court in presence of the accused, or communicated to the prosecutor and accused.

3. (1) Prolonged sittings unduly strain the attention of members of the court and may operate unfairly upon the accused, who should never be required to make his defence at the close of a prolonged sitting. Sittings of six or seven hours will be found as a rule quite long enough. Under Indian Military law, trials by court-martial may be held at any time.

(2) Where civilian witnesses are present, the court should, if reasonably possible, complete their evidence before adjourning.

(B) This meets the case where a view is necessary, or where a court-martial is held on the line of march, or where an adjournment to a hospital for the purpose of taking the evidence of a sick witness is rendered necessary.

As to view, see r. 69 and notes.

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(c) As to procedure on death of judge-advocate or his inability to attend, see r. 90. Where the absence of the judge-advocate is due to temporary causes, the court should adjourn until he is able to attend.

(d) These military exigencies can seldom occur except on active service.

**70-A. Suspension of trial.**—(1). Where, in consequence of anything arising while the court is sitting, the court is unable by reason or dissolution as specified in section 65 of the Act, or otherwise, to continue the trial, the president, or, in his absence, the senior member present, will immediately report the facts to the convening authority.

(2) Where a court-martial is dissolved before the finding, or, in case of a finding of guilty, before the sentence, the proceedings are null, and the accused may be tried before another court-martial.

**71. Proceedings on death or illness of accused.**—In case of the death of the accused, or of such illness of the accused as renders it impossible to continue the trial, the court shall ascertain the fact of the death or illness by evidence, and record the same, and adjourn, and transmit the proceedings to the convening authority.

## NOTE

1. See I. A. A. 65 (2). "Impossible to continue" means to continue within a reasonable time having regard to all the circumstances.

2. Oral evidence of the fact of the death or illness will be taken on oath or affirmation. Also, a medical certificate should always, where possible, be obtained, stating that the illness of the accused renders his presence in court impracticable, or dangerous to himself or others and also the time when, in the opinion of the medical officer, the accused will be able to be present.

**72. Death, retirement or absence of president.**—(A) In the case of the death, retirement on challenge or unavoidable absence of the president, the next senior officer shall take the place of the president and the trial shall proceed if the court is still composed of not less than the smallest number of officers of which it is required by law to consist.

(B) A member of a court who has been absent while any part of the evidence on the trial of an accused person is taken, shall take no further part in the trial by that court of that person, but the court will not be affected unless it is reduced below the legal minimum.

(c) An officer shall not be added to a court-martial after the accused has been arranged.

## NOTE

(A) See I. A. A. 65 (1) and notes.

(c) As to arraignment, see note to r. 38.

**73. Taking of opinions of members of court.**—(A) Every member of a court must give his opinion by word of mouth on every question which the court has to decide, and must give his opinion as to the sentence, notwithstanding that he has given his opinion in favour of acquittal.

(B) The opinions of the members of the court shall be taken in succession, beginning with the junior in rank.

## NOTE

1. Opinions must be given orally; see also r. 50 (B). The oath or affirmation taken by members of the court operates, save as therein provided to prevent the opinions of individual members from being disclosed; see r. 35.

2. I. A. A. 81 requires all decisions to be passed by an absolute majority except in the case of a sentence of death which requires a two-thirds majority (I. A. A. 87). The president has no second or casting vote in the case of a sentence of death; nor where there is an equality of votes on a challenge, or finding or sentence.

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3. In order to obtain an absolute majority in respect of the sentence, every member must vote, even if he had voted for an acquittal on the finding. It is desirable that the nature of the punishment to be awarded should first be considered.

The procedure to be adopted will best be illustrated by the following example:—

At a general court-martial consisting of seven members, three are in favour of a sentence of transportation, two in favour of imprisonment, and two in favour of dismissal (without imprisonment). The most lenient punishment will be first put to the vote and will be rejected by 5 votes to 2. The next most lenient punishment will then be put to the vote, viz., imprisonment. All seven members must vote again and the two members who had previously voted in favour of dismissal will naturally give their votes for imprisonment rather than transportation. The result will be an absolute majority of 4 votes to 3 in favour of imprisonment. The quantum or length of the imprisonment to be awarded will be arrived at in the same manner, the most lenient proposal being put to the vote first.

It is improper to strike an average between the various sentences suggested by the members of the court, but it may often happen that, in the course of further discussion, members who had originally made different proposals will arrive at a unanimous decision as to the proper sentence to be awarded.

(B) 1. The opinion of each member on the finding must be taken separately upon each charge upon which the accused is arraigned [sec r. 50 (B)].

2. "Junior in rank" means junior in the rank in which they take their seats (sec r. 63).

**74. Procedure on incidental question.**—If any objection on any matter of law, evidence, or procedure is raised by the prosecutor or by or on behalf of the accused during the trial, the prosecutor or the accused or counsel or the defending officer (as the case may be) shall have a right to answer the same and the person raising the objection shall have the right of reply.

## NOTE

This rule will apply to such questions as the admissibility of evidence, the propriety of any question or the recalling of a witness. It will also apply to a submission, which may always be made by or on behalf of the accused at the close of the case for the prosecution, that no case has been made out justifying the court in putting the accused upon his defence; see note (A) 1 to r. 47.

**75. Swearing of court to try several accused persons.**—(a) A court may be sworn or affirmed at one time to try any number of accused persons then present before it, whether those persons are to be tried collectively or separately, and each accused person shall have power to object to the members of the court, and shall be asked separately whether he objects to any member.

(b) In the case of several accused persons to be tried separately, the court, upon one of those persons objecting to a member, may, according as they think fit, proceed to determine that objection or postpone the case of that person and swear or affirm the members of the court for the trial of the others alone.

(c) In the case of several accused persons to be tried separately, the court, when sworn or affirmed, shall proceed with one case, postponing the other, cases, and taking them afterwards in succession.

(d) Where several accused persons are tried separately by the same court upon charges arising out of the same transaction, the court may, if they consider it to be desirable in the interests of justice, postpone consideration of any sentence to be awarded to any one or more of such accused persons until the trials of all such accused persons have been completed.

## NOTE

(A) Notwithstanding that, under this rule, the members of the court, are sworn only once to try the persons before them, they will be a separate court for the trial of each case, and the swearing of the court will be mentioned in the proceedings of each case.

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(b) 1. When, in consequence of an objection raised by one or several persons jointly charged, a new officer serves, the other accused persons, who had previously raised no objection to the members of the court, will have the right to object to the new officer.

2. Where two or more accused persons are tried separately by the same court and the objection to the members of the court, will have the right to object to the new officer. of the court for the trial of the accused who did not object to be tried by him.

(c) The finding and sentence [except where the court decides to act under para. (d) of this rule] must be arrived at before the next case is tried.

For form of proceedings, see para. 16 of Memoranda on p. 406.

(d) It is very desirable that the court should, where several persons are separately tried and convicted in respect of the same transaction, be in a position to apportion the proper sentences to be awarded to all the accused persons.

Inasmuch as a sentence of transportation or imprisonment will under I. A. A. 106 commence upon the day upon which it is eventually signed, the court, in awarding sentence, should take into consideration in favour of an accused person any postponement of sentence which has been occasioned through the operation of this paragraph.

**76. Swearing of interpreter and shorthand writer.**—(3) At any time during the trial an impartial person may, if the court think it necessary, and shall, if either the prosecutor or the accused request it on any reasonable ground, be sworn or affirmed to act as interpreter.

(B) An impartial person may at any time of the trial, if the court think it desirable, be sworn or affirmed to act as a shorthand writer.

(c) Before a person is sworn or affirmed as interpreter or shorthand writer the accused shall be informed of the person who is proposed to be sworn or affirmed, and may object to the person as not being impartial; and the court, if they think that the objection is reasonable, shall not swear or affirm that person as interpreter or shorthand writer.

## NOTE

(A) 1. An interpreter or shorthand writer is usually sworn at the commencement of the trial.

2. For the occasions when an interpreter must be employed, see r. 77 and note.

An interpreter may either be appointed by the convening officer [r. 27 (c)] or by the court under this rule. If a member of the court is appointed interpreter, he must take the interpreter's oath (or affirmation) in addition to the oath prescribed for a member of the court in Rule 35. A member should not normally act as an interpreter where the trial is likely to be prolonged.

3. For form of oath or affirmation, see r. 36.

(c) The same procedure will be followed as in the case of an objection to a member of the court.

**77. Evidence when to be translated.**—When any evidence is given in a language which any of the officers composing the court, the judge-advocate, the prosecutor or the accused does not understand, that evidence shall be interpreted to such officer or person in a language which he does understand. If an interpreter in such language has been appointed by the convening officer, and duly sworn or affirmed, the evidence shall be interpreted by him. If no such interpreter has been appointed and sworn or affirmed, an impartial person shall be sworn or affirmed by the court as required by Rule 76. When documents are put in for the purpose of formal proof, it shall be in the discretion of the court to cause as much to be interpreted as appears necessary.

## NOTE

As the charge-sheet and documentary evidence as to character will be in English, an interpreter in the language of the accused person should be appointed in every case in which



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the accused does not know enough English to understand these documents. Whoever interprets any evidence must be sworn or affirmed as an interpreter before doing so (see r. 76 and notes).

**78. Record in proceedings of transactions of court-martial.**—(A) At a court-martial the judge-advocate, or, if there is none, the president shall record, or cause to be recorded in the English language, all transactions of that court, and shall be responsible for the accuracy of the record (in these rules referred to as the proceedings); and if the judge-advocate is called as a witness by the accused, the president shall be responsible for the accuracy of the record in the proceedings of the evidence of the judge-advocate.

(B) The evidence shall be taken down in a narrative form in as nearly as possible the words used; but in any case where the prosecutor, the accused person, the judge-advocate, or the court considers it material, the question and answer shall be taken down verbatim.

(C) Where an objection has been taken to any question or to the admission of any evidence or to the procedure of the court, such objection shall, if the prosecutor or accused so requests or the court think fit, be entered upon the proceedings together with the grounds of the objection, and the decision of the court thereon.

(D) Where any address by, or on behalf of, the prosecutor or the accused, is not in writing, it shall not be necessary to record the same in the proceedings further or otherwise than the court think proper, except that —

- (1) the court shall in every case make such record of the defence made by the accused as will enable the confirming officer to judge of the reply made by, or on behalf of, the accused to each charge against him; and
- (2) the court shall also record any particular matters in the address by, or on behalf of the prosecutor or the accused, which the prosecutor or the accused, as the case may be, requires.

(E) The court shall not enter in the proceedings any comment or anything not before the court, or any report of any fact not forming part of the trial; but if any such comment or report seems to the court necessary, the court may forward it to the proper military authority in a separate document, signed by the president

## NOTE

(A) 1. The record, where no shorthand writer is employed, must be taken in a clear and legible hand or typed. Interlineations and corrections must be avoided as much as possible; if made they should be initialled by the president (or judge-advocate). If desired, a typed copy may be substituted for the original manuscript record; if so substituted it must be checked with the original by the officer responsible for the accuracy of the proceedings. The pages should be numbered and the various sheets fastened together, sheets not used being removed. Sufficient space must be left below the signature of the president for the decision of the confirming authority. The place and date of the signing of the sentence by the president must be inserted.

See Memoranda for guidance of courts-martial, paras. 14-35, pp. 406-408.

2. No corrections or additions may be made to the proceedings of a court-martial after promulgation. When an obvious oversight has been made in the record, such as the omission of the words "the president and members are duly sworn", a certificate, signed by the president, to the effect that they were sworn should be attached. But see note 1 to r. 56 as to signing and dating the sentence after promulgation.

(B) 1. The material effect of the question and answer will be written down; e.g., where the question is "What did the accused do next?" and the answer is "He left the room"; the evidence, as recorded, would read "The accused then left the room".

Documentary evidence will be read by the president or judge-advocate, it should then be marked with a distinguishing letter or figure and attached to the proceedings. In many cases it will be sufficient to attach copies of documents which must, however, be compared with the originals by the court and certified under the hand of the president to be true copies (see note 2 to r. 56).

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If a shorthand writer is employed the evidence is usually taken down *verbatim* by him. If the evidence of a witness is not given in English, the material effect of question and answer interpreted in English will be recorded.

2. The rule applies to questions and answers given in cross-examination and re-examination as well as in examination-in-chief.

(e) The court can make in a separate document any remark they think proper on the conduct of any person who appeared before them, or on the manner in which a particular witness has given his evidence, or on the manner in which the prosecution has been conducted; also, if they think the evidence shows that the accused has committed some offence not charged, e.g., if he is charged with desertion in August, and the evidence shows that he deserted in June, they must acquit him, but may report separately the offence of June.

The court can scarcely be too guarded in expressing censure on individuals not before them for trial; indeed, cases justifying such expression will be rare and exceptional.

It will usually be desirable to make a note at the time of any matter upon which the court intend to make any such comment or report, although it will not be correct to enter such matter in the proceedings.

**79. Custody and inspection of proceedings.**—The proceeding shall be deemed to be in the custody of the judge-advocate (if any), or, if there is none, of the president, but may, with proper precautions for their safety, be inspected by the members of the court, the prosecutor and accused, respectively, at all reasonable times before the court is closed to consider the finding.

**80. Transmission of proceedings after finding.**—The proceedings shall be at once sent by the person having the custody thereof to such person as may be directed by the order convening the court, or, in default of any such direction, to the confirming officer.

## NOTE

1. As to custody of the proceedings, see r. 79.
2. For procedure where a member of the court has become confirming officer, see r. 62.
3. The proceedings of courts-martial, when despatched by post, should invariably be sent under registered cover.

*Defending Officer, Friend of Accused and Counsel.*

**81. Defending officer and friend of accused.**—(A) At any general or district court-martial, if an accused person is not represented by counsel, he may be represented by any officer subject to military law who shall be called "the defending officer" or assisted by any person whose services he may be able to procure and who shall be called "the friend of the accused".

(B) It shall be the duty of the convening officer to ascertain whether an accused person not otherwise represented desires to have a defending officer assigned to represent him at his trial and, if he does so desire, the convening officer shall use his best endeavours to ensure that the accused shall be so represented by a suitable officer. If owing to military exigencies, or for any other reason, there shall in the opinion of the convening officer, be no such officer available for the purpose, the convening officer shall give a written notice to the president of the court-martial, and such notice shall be attached to the proceedings.

(C) The defending officer shall have the same rights and duties as appertain to counsel under these rules and shall be under the like obligations.

(D) The friend of the accused may advise the accused on all points and suggest the questions to be put to the witnesses, but he shall not examine or cross-examine the witnesses or address the court.

## NOTE

(A) 1. Under r. 22 (A) the accused, after he has been ordered to be tried by court-martial, is to be allowed free communication with his "friend", defending officer, or legal adviser.

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2. As to the duties of the defending officer, see Memoranda, pp. 410-411.

(b) 1. Every effort should be made to secure the services of a competent officer and he should be allowed time and opportunity for properly preparing the defence of the accused.

2. There is power under r. 25 to dispense with this paragraph in the event of military exigencies, etc.

(c) *i.e.*, the defending officer must conduct the case as representing the accused, see rr. 83 (c), 85 and 86.

**82. Counsel allowed in certain general and district courts-martial.**—(A) Subject to these rules, counsel shall be allowed to appear on behalf of the prosecutor and accused at general and district courts-martial if the Commander-in-Chief in India or the convening officer declares that it is expedient to allow the appearance of counsel thereat, and such declaration may be made as regards all general and district courts-martial held in any particular place, or as regards any particular general or district court-martial and may be made subject to such reservation as to cases on active service, or otherwise, as seems expedient.

(B) Save as provided in Rule 81, the rules with respect to counsel shall apply on to the courts-martial at which counsel are under this rule, allowed to appear.

## NOTE

(A) For qualifications of counsel, see r. 87 (b).

There is no restriction as to the number of counsel engaged in a case. Counsel for the defence, though not bound to such strict impartiality as the prosecutor must nevertheless recollect that he is assisting in the administration of justice and must not be guilty of any unfairness or want of candour in his conduct of the case. In his address he will have the same liberty as the accused [see r. 66 (c)]; but he should exercise more restraint in commenting on the acts of persons not before the court.

**83. Requirements for appearance of counsel.** (A) An accused person intending to be represented by counsel shall give to his commanding officer or to the convening officer the earliest practicable notice of such intention and, if no sufficient notice has been given, the court may, if they think fit, on the application of the prosecutor, adjourn to enable him to obtain counsel on behalf of the prosecutor at the trial.

(B) If the convening officer so directs, counsel may appear on behalf of the prosecutor, but in that case, unless the notice in (A) has been given by the accused, notice of the direction for counsel to appear shall be given to the accused at such time (not in any case less than seven days) before the trial, as would, in the opinion of the court, have enabled the accused to obtain counsel to assist him at the trial.

(c) The counsel, who appears before a court-martial on behalf of the prosecutor or accused, shall have the same right as the prosecutor or accused for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the court, to put in any plea, and to inspect the proceedings, and shall have the right otherwise to act in the course of the trial in the place of the person on whose behalf he appears, and he shall comply with these rules as if he were that person and in such case that person shall not have the right himself to do any of the above matters except as regards the statement allowed by Rules 47 (b) (ii) (a) and 48 (ii) (a) or except so far as the court permit him so to do.

(d) When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined and re-examined as any other witness, and Rule 46 (c) and (d) shall not apply.

## INVESTIGATION OF CHARGES AND TRIAL BY COURT MARTIAL

## NOTE

(B) When the convening officer intends to appoint or apply for the services of an officer of the Judge-Advocate-General's Department or an officer holding legal qualifications to act as prosecutor, similar notice should be given to the accused, to enable him, if he so desires, to obtain counsel to represent him at the trial.

**84. Counsel for prosecution.**—The counsel appearing on behalf of the prosecutor shall have the same duty as the prosecutor, and is subject to be stopped and restrained by the court in the manner provided by Rule 66(B).

## NOTE

Counsel appearing on behalf of the prosecutor should always make an opening address, and should state therein the substance of the charge against the accused and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into unnecessary detail.

**85. Counsel for accused.**—The counsel appearing on behalf of the accused has the like rights, and is under the like obligations as are specified in Rule 66(C) in the case of the accused.

If the court ask counsel for the accused a question as to any witness or matter, he may decline to answer, but he must not give to the court any answer or information which is misleading.

**86. General rules as to counsel.**—Counsel, whether appearing on behalf of the prosecutor or of the accused, shall conform strictly to these rules and to the rules of criminal courts in India relating to the examination, cross-examination, and re-examination of witnesses, and relating to the duties of counsel.

## NOTE

1. See Pt. I, ch. V, paras. 101-118, especially para. 110 as to injurious questions.

2. Counsel should not state as a fact any matter which is not proved, or which he does not intend to prove in evidence, nor should he state what is his own opinion as to any matter of fact before the court. In a question to a witness he should not assume that facts have been given in evidence which have not been so given, or that particular answers have been given contrary to the fact.

3. Counsel should treat the court and judge-advocate with due respect, and should, while regarding the exigencies of his case, bear in mind the requirements of military discipline in the respectful treatment of any superior officer of the accused who may attend as a witness.

**87. Qualifications of counsel.**—(A) Neither the prosecutor nor the accused has any right to object to any counsel if properly qualified.

(B) Counsel shall be deemed properly qualified if he is a legal practitioner authorized to practise with right of audience in a Court of Sessions in British India, or if, in any part of His Majesty's dominions other than British India, he is recognised by the convening officer as having in that part rights and duties similar to those of such a legal practitioner in British India and as being subject to punishment or disability for a breach of professional rules.

**88.** (Omitted.)

*Judge-Advocate*

**89. Disqualification of judge-advocate.**—An officer who is disqualified for sitting on a court-martial, and any other person who would have been so disqualified had he been an officer, shall be disqualified for acting as judge-advocate at that court-martial.

## NOTE

1. As to the appointment of a judge-advocate at a general or district court-martial, see J. A. A. 78. Omission to appoint a judge-advocate at a general court-martial will invalidate the proceedings.



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2. As to disqualification, see r. 29 (B) and notes.

A judge-advocate should be free of all suspicion of bias or prejudice. He should have had experience of the practice and procedure of courts-martial and a knowledge of the general principles of law and of the rules of evidence.

**90. Death, illness, or absence of judge-advocate.**—If the judge-advocate dies, or is unable to attend from illness, or from any cause whatever, the court shall adjourn and the president shall report the circumstances to the convening authority; and in the case of death, or, if in any other case the convening officer is of opinion that it is inexpedient to delay the continuance of the trial, the court shall be dissolved and the accused may be tried against before another court.

The court will in no circumstances proceed in the absence of a judge-advocate who has been duly appointed.

**91. Powers and duties of judge-advocate.**—The powers and duties of a judge-advocate are as follows:—

(A) The prosecutor and the accused, respectively, are at all times, after the judge-advocate is named to act on the court, entitled to his opinion on any question of law relative to the charge or trial, whether he is in or out of court, subject, when he is in court, to the permission of the court.

(B) At a court-martial he represents the judge-advocate-General.

(C) He is responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not, he shall inform the convening officer and the court of any informality or defect in the charge, or in the constitution of the court, and shall give his advice on any matter before the court.

(D) Any information or advice given to the court on any matter before the court shall, if he or the court desire it, be entered in the proceedings.

(E) At the conclusion of the case he shall, unless both he and the court consider it unnecessary, sum up the evidence and give his opinion upon the legal bearing of the case, before the court proceed to deliberate upon their finding.

(F) The court, in following the opinion of the judge-advocate on a legal point, may record that they have decided in consequence of that opinion.

(G) The judge-advocate has, equally with the president, the duty of taking care that the accused does not suffer any disadvantage in consequence of his position as such, or of his ignorance or incapacity to examine or cross-examine witnesses or otherwise, and may, for that purpose, with the permission of the court, call witnesses and put questions to witnesses which appear to him necessary or desirable to elicit the truth.

(H) In fulfilling his duties the judge-advocate must be careful to maintain an entirely impartial position.

## NOTE

(E) See r. 49 and note.

(F) Upon any point of law or procedure which arises upon the trial, the court should be guided by the opinion of the judge-advocate, and not disregard it, except for very weighty reasons. The court are responsible for the legality of their decisions, but they must consider the grave consequences which may result from their disregard of the advice of the judge-advocate on any legal point. If a court-martial, acting without jurisdiction or in excess of jurisdiction, convict an officer or soldier, the members of the court may be held liable in damages by a civil court and such liability—or at least the amount of the damages—may depend upon the question whether they exercised a *bona fide* judgment, and the fact that they accepted the advice of the judge-advocate, even if such advice was held to be wrong, might practically exonerate the members from liability.

(G) 1. For duty of president, see r. 65 (B) and note.

## INVESTIGATION OF CHARGES AND TRIAL BY COURT MARTIAL

2. Permission to call and question witnesses should never be refused unless the court consider that the judge-advocate is acting improperly or in such a manner as to obstruct the proceedings. The court should record their reason for refusing permission.

## SECTION 3.—SUMMARY COURTS-MARTIAL.

**92. Proceedings.**—The officer holding the trial, hereinafter called the court, shall record, or cause to be recorded, in the English language, the transactions of every summary court-martial.

## NOTES

See r. 78 and notes which apply *mutatis mutandis* to this rule.

**93. Evidence when to be translated.**—When any evidence is given in a language which the court or the accused does not understand, that evidence shall be interpreted to the court or accused as the case may be in a language which it or he does understand. The court shall, for this purpose, either appoint an interpreter, or shall itself take the oath or affirmation prescribed for an interpreter at a summary court-martial. When documents are put in for the purpose of formal proof, it shall be in the discretion of the court to cause as much to be interpreted as appears necessary.

## NOTES

1. See note to r. 77.

Any evidence not understood by the officers attending the trial should also be translated to them.

2. The commanding officer should, as a general rule, take the interpreters oath or affirmation himself, in addition to the oath or affirmation prescribed in Rule 95 for the court. In the rare cases where the commanding officer does not know the language of the accused he should appoint a competent interpreter. Whoever interprets any evidence must be sworn or affirmed as an interpreter before doing so; but see r. 135.

**94. Assembly.**—When the court, the interpreter (if any), and the officers attending the trial are assembled, the accused shall be brought before the court, and the oaths or affirmations prescribed in Rule 95 taken by the persons therein mentioned.

## NOTES

The accused cannot object to the court or interpreter.

**95. Swearing or affirming of court and interpreter.**—(A) The court shall make oath or affirmation in one of the following forms or in such other form to the same purport as may be according to its religion or otherwise binding on its conscience.

*Form of oath.*

"I swear by Almighty God that I will duly administer justice, according to the Indian Army Act, without partiality, favour or affection, and if any doubt shall arise, then, according to my conscience, the best of my understanding, and the custom of war in the like cases."

*Form of affirmation.*

"I solemnly affirm, in the presence of Almighty God, that I will duly administer justice,"—etc.,—as in the form of oath.

(B) After which the court, or some person empowered by it, shall administer to the interpreter (if any) an oath or affirmation in one of the following forms, or in such other form to the same purport as the court ascertains to be according to his religion or otherwise binding on his conscience.

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*Form of oath.*

"I swear by Almighty God that I will faithfully interpret and translate, as I shall be required to do touching the matter before this court-martial."

*Form of affirmation.*

"I solemnly affirm, in the presence of Almighty God, that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial."

(c) After the oaths and affirmations have been administered all witnesses will withdraw from the court.

## NOTES

1. See notes to rr. 35 and 37 which apply *mutatis mutandis* to the oaths and affirmations referred to in this rule.

2. See I. A. A. 64. The "court" is the officer holding the trial. Two other officers must attend the trial, but these officers do not form part of the court and are not, as such, sworn or affirmed.

**96. Swearing of court to try several accused persons.**—(A) A summary court-martial may be sworn or affirmed at the time to try any number of accused persons then present before it whether those persons are to be tried collectively or separately.

(B) In the case of several accused persons to be tried separately, the court, when sworn or affirmed, shall proceed with one case postponing the other cases and taking them afterwards in succession.

(c) Where several accused persons are tried separately upon charges arising out of the same transaction, the court may, if it considers it to be desirable in the interests of justice, postpone consideration of any sentence to be awarded to any one or more such accused persons until the trials of all such accused persons have been completed.

## NOTES

See notes to r. 75 which apply *mutatis mutandis* to this rule.

**97. Arraignment of accused.**—(A) After the court and interpreter (if any) are sworn or affirmed as above-mentioned, the accused shall be arraigned on the charges against him.

(B) The charges on which the accused is arraigned shall be read and, if necessary, translated to him, and he shall be required to plead separately to each charge.

## NOTES

(A) 1. As to framing charges, see rr. 18-20 and notes. Where, under I. A. A. 74, the sanction of superior authority is necessary for the trial of a charge by summary court-martial, such sanction should be entered at the foot of the charge-sheet and signed by the superior authority or a staff officer.

2. "Arraignment" consists of (1) calling upon the accused by his number, rank, name and description as given in the charge-sheet and asking him "Is that your number, rank, name and unit (or description)?" ; (2) reading the charge to him; and (3) asking him whether he is guilty or not guilty.

Where two or more persons are jointly charged and tried for the same offence, each is separately arraigned. Where there are more charge-sheets than one against an accused, he must be arraigned and tried upon the first charge-sheet before arraignment upon the second or subsequent charge-sheets; see rr. 68 and 112.

(B) 1. The charge-sheet, after being read to the accused, will be annexed to the proceedings.

## INVESTIGATION OF CHARGES AND TRIAL BY COURT MARTIAL

2. The plea of the accused must be taken on all the charges in a charge-sheet. This applies to alternative charges if the accused has been arraigned upon them [see, however, r. 101 (c)].

**98. Objection by accused to charge.**—The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Act, or is not in accordance with these rules.

## NOTES

1. *e.g.*, a charge laid under I. A. A. 35 (e) of losing by neglect the property of a comrade would not disclose an offence under that section of the Act.

2. See rr. 18 to 21 and notes.

3. For procedure where it appears that the accused is, by reason of insanity, unfit to take his trial, see r. 131.

**99. Amendment of charge.**—(A) At any time during the trial if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, it may amend the charge-sheet so as to correct that mistake.

(B) If on the trial of any charge it appears to the court at any time before it has begun to examine the witnesses, that in the interests of justice any addition to, omission from, or alteration in, the charge is required, it may amend such charge and may, after due notice to the accused, and with the sanction of the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the accused if the amended charge requires such sanction, proceed with the trial on such amended charge.

## NOTES

1. See notes to r. 40.

2. See I. A. A. 74 and notes. If the amended charge is one requiring reference to superior authority and the officer holding the trial considers that there is grave reason for immediate action and that such reference cannot be made without detriment to discipline, he should attach an explanatory memorandum (r. 116) to the proceedings and, after giving the accused sufficient notice of the amendments, proceed with the trial.

**100. Special pleas.**—If a special plea to the general jurisdiction of the court, or a plea in bar of trial, is offered by the accused, the procedure laid down for general and district courts-martial when disposing of such pleas shall, so far as may be applicable, be followed, but no finding by a summary court-martial on either of such pleas shall require confirmation.

## NOTES

See rr. 41 and 43 and notes.

**101. General plea of "Guilty" or "Not guilty".**—(A) The accused person's plan—"Guilty" or "Not guilty" (or if he refuses to plead or does not plead intelligibly either one or the other, a plea of "Not guilty")—shall be recorded on each charge.

(B) If an accused person pleads "Guilty", that plea shall be recorded as the finding of the court; but before it is recorded, the court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence (if any) or otherwise that the accused ought to plead not guilty.

(C) Where an accused person pleads guilty to the first of two or more charges laid in the alternative, the court may, after sub-rule (B) of this rule has been complied with and before and accused is arraigned on the alternative charge or



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charges, withdraw such alternative charge or charges without requiring the accused to plead thereto, and a record to that effect shall be made upon the proceedings of the court.

## NOTES

See notes to r. 42 which apply *mutatis mutandis* to this rule.

**102. Procedure after plea of "Guilty".**—(A) Upon the record of the plea of "Guilty," if there are other charges in the same charge-sheet to which the plea is "Not guilty", the trial shall first proceed with respect to those other charges, and, after the finding on those charges, shall proceed with the charges on which a plea of "Guilty" has been entered; but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge, or may, instead of trying him, record a finding of "Guilty" upon any one of the alternative charges to which he has pleaded "Guilty" and a finding of "Not Guilty" upon all the other alternative charges.

(B) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges) the court shall read the summary of evidence, and annex it to the proceedings, or if there is no such summary, shall take and record sufficient evidence to enable it to determine the sentence, and the reviewing officer to know all the circumstances connected with the offence. This evidence shall be taken in like manner as is directed by these Rules in the case of a plea of "Not guilty".

(C) After such evidence has been taken, or the summary of evidence has been read, as the case may be, the accused may address the court in reference to the charge and in mitigation of punishment and may call witnesses as to his character.

(D) If from the statement of the accused, or from the summary of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of "Guilty", the court shall alter the record and enter a plea of "Not guilty", and proceed with the trial accordingly.

(E) If a plea of "Guilty" is recorded and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under (B) and (C) shall take place when the findings on the other charges in the same charge-sheet are recorded.

(F) When the accused states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same.

## NOTES

See notes to r. 44.

**103. Withdrawal of plea of "Not guilty".**—The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not guilty" and plead "Guilty", and in such case the court shall at once, subject to a compliance with Rule 101 (B), record a plea and finding of "Guilty", and shall, so far as is necessary, proceed in manner directed by Rule 102.

**104. Procedure after plea of "Not guilty".**—After the plea of "Not guilty" to any charge is recorded the evidence for the prosecution will be taken. At the close of the evidence for the prosecution the accused shall be asked if he has anything to say in his defence, and may address the court in his defence, or may defer such address until he has called his witnesses.

The accused may then call his witnesses, including also witnesses to character.

## INVESTIGATION OF CHARGES AND TRIAL BY COURT MARTIAL

## NOTES

1. For form of proceedings, see pp. 382-385.

2. For general provisions as to witnesses and evidence, see rr. 120-129.

3. As to the record in the proceedings of transactions of the court, see generally r. 78.

The evidence will be taken by question and answer, or the witness may be asked to tell his own story, questions being subsequently asked to make good any omissions. It will, as a rule, be recorded in a narrative form; but where the accused or the court considers it material, the question and answer will be taken down *verbatim*. The material effect of the question and answer will be written down, e.g., where the question is "what did the accused do next?" and the answer is "he left the room", the evidence as recorded would read "the accused then left the room". Documentary evidence after being read should be marked with a distinguishing letter or figure and attached to the proceedings (see also note 2 to r. 56).

4. It is open to the accused, at the close of the case for the prosecution, to submit that the evidence given for the prosecution has not established a *prima facie* case against him and that he should not, therefore, be called upon for his defence. If the court is satisfied that it is well founded, the accused must be acquitted.

5. The utmost liberty consistent with the interests of parties not before the court and with the dignity of the court itself should be allowed to the accused in making his defence [see r. 66 (c) and note], and the court should, if necessary, adjourn to allow him time for its preparation. He has the privilege of making statements which are unsupported by evidence (see note 6 to r. 47), and he cannot be questioned by the court upon his statement or address except when it is desired to supplement the defence or to bring out more clearly the points which the accused urges in his favour.

It should be remembered that an accused person cannot give evidence on oath, and therefore any statement made by him must be carefully considered. Though not given on both and subject to the test of cross-examination, it will often be of value, particularly if it is in any respect corroborated by evidence from other sources.

**105. Witnesses in reply to defence.**—The court may, if it thinks it necessary in the interests of justice, call witnesses in reply to the defence.

## NOTES

1. This is an extreme measure and should only be resorted to when the accused has made or elicited from his witnesses some statement material to his defence, which could not reasonably have been foreseen when the case for the prosecution was being investigated. See also note to r. 129.

2. As to reference by accused to a Government officer at a trial for desertion, etc., see I. A. A. 92.

**106. Verdict.**—After all the evidence, both for prosecution and defence, has been heard, the court shall give its opinion as to whether the accused is guilty or not guilty of the charges.

## NOTES

1. The court need not be closed and the finding may be pronounced at once. On the other hand the officer holding the trial may clear the court to consider the evidence, or to discuss any point with the officers attending the trial, or may adjourn the court to allow himself time for mature consideration or reference as to any doubtful point.

2. See also notes to r. 50 which apply *mutatis mutandis* to this rule.

**107. Finding.**—(A) The finding on every charge upon which the accused is arraigned shall be recorded, and except as mentioned in these rules shall be recorded simply as a finding of "Guilty", or of "Not guilty", or of "Not guilty and honourably acquit him of the same".

(B) When the court are of opinion as regards any charge that the facts proved do not disclose the offence charged or any offence of which he might under the Act legally be found guilty on the charge as laid, the court shall acquit the accused of that charge.

(C) When the court is of opinion as regards any charge that the facts found to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence

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stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of "Not guilty" record a special finding.

(D) The special finding may find the accused guilty on a charge subject to the statement of exceptions or variations specified therein.

## NOTES

See notes to r. 51.

**108. Procedure on acquittal.**—If the finding on each of the charges in a charge-sheet is "Not guilty", the court shall date and sign the proceedings, the findings will be announced in open court, and the accused will be released in respect of those charges.

**109. Procedure on finding of "guilty".**—(A) If the finding on any charge is "Guilty", the court may record of its own knowledge, or take evidence of and record, the general character, age, service, rank, and any recognised acts of gallantry, or distinguished conduct of the accused, and previous convictions of the accused either by a court-martial, or a criminal court, any previous punishments awarded to him by an officer exercising authority under section 20 of the Act, the length of time he has been in arrest or in confinement on any previous sentence, and any military decoration, or military reward, of which he may be in possession or to which he is entitled.

(B) If the court does not record the matters mentioned in this rule of its own knowledge, evidence on these matters may be taken in the manner directed in Rule 53 for similar evidence at general and district courts-martial.

## NOTES

See notes to r. 53.

**110. Sentence.**—The court shall award one sentence in respect of all the offences of which the accused is found guilty.

## NOTES

1. See notes to r. 54.

2. Sentences, unless for one year exactly, should, if for one month or upwards, be recorded in months. Sentences consisting partly of months and partly of days should be recorded in months and days. A month means a calendar month.

3. See first para. of Note 3 to section 107.

4. For the date a sentence of dismissal awarded by a court-martial takes effect, see r. 154. Sentences of imprisonment combined with dismissal should as a rule, be carried out by confinement in a civil prison.

5. Sentences of simple imprisonment are inexpedient and inconvenient of execution.

6. As to suspension of sentences of imprisonment, see section 3 of the Indian Army (Suspension of Sentences) Act.

(Form of proceedings, pp. 388-390).

**111. Signing of proceedings.**—The Court shall date and sign the sentence and such signature shall authenticate the whole of the proceedings.

## NOTES

It is essential that the date of the sentence should be inserted, as under I. A. A. 106 a term of imprisonment is reckoned to commence on the day on which the sentence and proceedings were signed by the court.

**112. Charges in different charge-sheets.**—When the charges at a trial by summary court-martial are contained in different charge-sheets, the procedure laid down for general and district courts-martial when trying charges contained in different charge-sheets, shall, so far as may be applicable, be followed.

## NOTES

As to insertion of charges in separate charge-sheets and procedure, see r. 68 and notes.

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**113. Clearing the court.**—(A) The officer holding the trial may clear the court to consider the evidence or to consult with the officers, attending the trial.

(B) Except as above-mentioned, all the proceedings, including the view of any place, shall be in open court, and in the presence of the accused.

See notes to r. 69.

**114. Adjournment.**—A summary court-martial may adjourn from time to time, and from place to place, and may, when necessary, view any place.

## NOTES

See generally notes to r. 70.

**115. Friend of accused.**—In any summary court-martial an accused person may have a person to assist him during the trial, whether a legal adviser or any other person. A person so assisting him may advise him on all points and suggest the questions to be put to witnesses, but shall not examine or cross-examine witnesses or address the court.

**116. Memorandum to be attached to proceedings.**—An explanatory memorandum is to be attached to the proceedings when a summary court-martial tries, without reference, an offence which should not ordinarily be so tried.

## NOTES

See I. A. A. 74 and notes. This explanation should invariably be attached. If the officer holding the trial loses sight of the law and tries without reference any of the offences mentioned in I. A. A. 74 without considering whether grave reasons for immediate action exist or not, the trial is illegal.

**117. Promulgation.**—The sentence of a summary court-martial shall (except as provided in Rule 118) be promulgated, in the manner usual in the service, at the earliest opportunity after it has been pronounced and shall be carried out without delay after promulgation.

## NOTES

See generally notes to r. 58.

**118. Promulgation to be deferred in certain circumstances.**—When the officer holding the trial has less than five years' service, the sentence of a summary court-martial shall not (except on active service) be promulgated or carried out until approved by superior authority as provided in section 101 of the Act.

## NOTES

The officer to whom the sentence is referred cannot in any way alter the finding or remit, mitigate, or commute the sentence, but if he considers the sentence too severe he should inform the officer holding the trial of his views and direct him to modify the sentence, which order should be obeyed as a matter of discipline. The original sentence must not be carried out until the case is finally settled.

The provisions of this Rule do not affect the date from which the sentence takes effect; see I. A. A. 106 and r. 154.

**119. Review of proceedings.**—The proceedings of a summary court-martial shall, immediately on promulgation, be forwarded (through the deputy or assistant judge-advocate-general of the command in which the trial is held) to the officer authorised to deal with them in pursuance of section 102 of the Act. After review by him they will be returned to the accused person's corps for preservation in accordance with Rule 132.

## NOTE

See I. A. A. 102. The proceedings of a summary court-martial will not be set aside on merely technical grounds. The words "merits of the case" refer to cases where the charge discloses no offence, or where the evidence is insufficient to support the charge, or where there is some material irregularity in procedure which, in the opinion of the reviewing authority, has led to injustice. But where the accused is not misled by any defect in the charge and the statement of offence and the particulars taken together disclose an offence under the Act and supply the accused with sufficient information of

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the particulars of the charge which he has to meet, the evidence on which the accused is convicted is given on oath or affirmation and is legally admissible and reasonably sufficient to support the charge, and the accused has not been prejudiced by any irregularity in procedure and has been allowed to call his witnesses and to cross-examine the witnesses against him, the proceedings may legally be upheld, the irregularities calling for no more than a remark for future guidance.

## SECTION 4.—GENERAL PROVISIONS.

*Witnesses and evidence.*

**120. Calling of all prosecutor's witnesses.**—The prosecutor or, in the case of trials by summary court-martial, the court is not bound to call all the witnesses whose evidence is in the summary or abstract of evidence or whom the accused has been informed they intend to call, but they should ordinarily call such of them as the accused desires, in order that he may cross-examine them, and shall, for this reason, so far as practicable, secure the attendance of all such witnesses.

## NOTES

1. As to giving to the accused the summary or abstract of evidence, see r. 22 (B).
2. It will be noted that the prosecutor is not required to call any witness at the trial who was called by the accused at the taking of the summary of evidence.
3. It is not necessary for the prosecutor to examine at length a witness for the prosecution called at the request of the accused and tendered for cross-examination by the accused under this rule.

**121. Calling of witness whose evidence is not contained in summary.**—If the prosecutor or, in the case of a summary court-martial, the court intends to call a witness whose evidence is not contained in any summary or abstract of evidence given to the accused, notice of the intention shall be given to the accused a reasonable time before the witness is called together with an abstract of his proposed evidence; and if such witness is called without such notice or abstract having been given, the court shall, if the accused so desire it, either adjourn after taking the evidence of the witness, or allow the cross-examination of such witness to be postponed, and the court shall inform the accused of his right to demand such adjournment or postponement.

It will be noted that this rule applies only in the case of witnesses called for the prosecution and not in the case of witnesses called by the accused or by the court under r. 129 (D).

## NOTE

**122. List of witnesses for accused.**—The accused shall not be required to give to the prosecutor or court a list of the witnesses whom he intends to call, but it shall rest with the accused alone to secure the attendance of any witness whose evidence is not contained in the summary or abstract, and for whose attendance the accused has not requested steps to be taken as provided by Rule 23(A).

## NOTE

A member of the court, the judge-advocate and prosecutor are competent witnesses for the defence, and may be sworn at any stage of the proceedings, but an officer should not be detailed to serve as a member of, or act as prosecutor or judge-advocate at, a court-martial if his evidence is likely to be required. A witness for the prosecution cannot serve as a member of the court or act as judge-advocate at the trial of the case in which he is a witness [see rr. 29 (B) and 89].

**123. Procuring attendance of witnesses.**—(A) In the case of trials by general or district court-martial the commanding officer of the accused, the convening officer, or, after the assembly of the court, the president, shall take proper steps to procure the attendance of the witnesses whom the prosecutor or accused desires to call, and whose attendance can reasonably be procured, but the person requiring the attendance of a witness may be required to undertake to defray the cost (if any) of their attendance.



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(B) The court shall, in the case of trials by summary court-martial, take proper steps to procure the attendance of the witnesses whom the accused desires to call and whose attendance can reasonably be procured, but the accused may be required to undertake to defray the cost (if any) of their attendance.

## NOTES

1. See I. A. A. 84 as to summoning witnesses.

For form of summons, see p. 397.

Witnesses who are subject to military law should be ordered by the proper authority to attend without the issue of a formal summons.

2. An accused person can have no technical ground of complaint if the attendance of a witness from distant parts cannot be procured, but it is the duty of the commanding or convening officer, or, after the assembly of the court, the president or, in the case of trial by summary court-martial, the court, to take all reasonable steps to secure the attendance of any witness whom there is any ground to suppose to be material to the defence, and Rule 124 makes provision for the adjournment of the court if the attendance of such witness is essential.

3. The power to require, the person calling a witness to undertake to defray the cost of his attendance is given in order to prevent an unreasonable demand by prosecutors or accused persons for the attendance of witnesses. In the case of the prosecutor, the cost will usually be defrayed as part of the expenses of the prosecution. In the case of the accused, this provision should not be allowed to interfere with the calling of a witness who appears to be material. The absence of a material witness might afterwards be held to invalidate the proceedings of a court-martial, even though, if the witness had been called, the court would probably have arrived at the same decision, inasmuch as it is impossible to tell what effect the evidence of such a witness might have had upon the court.

As to expenses of witnesses, see Passage Regulations, India.

4. If a civilian witness has in his possession or under his control any books, accounts, letters, returns, papers or other documents which are considered necessary for the trial, care must be taken in summoning him to require him to bring them with him; the witness would be justified in declining to acknowledge a mere oral request.

5. For action where a civilian witness, who has been duly summoned and whose expenses have been tendered, makes default in attending, see r. 136 (c) and notes. As to privilege from arrest under civil or revenue process of a witness summoned to attend before a court-martial, see I. A. A. 118.

**124. Procedure when essential witness is absent.**—If such proper steps as mentioned in the preceding rule have not been taken as to any witness, or if any witness whose attendance could not be reasonably procured before the assembly of the court is essential to the prosecution or defence, the court shall—

- (a) take steps to procure the issue of a commission for the examination of such witness; or
- (b) if it is a general or district court-martial, adjourn and report the circumstances to the conveying officer; or
- (c) if it is a summary court-martial, adjourn to enable the witness to attend, or adopt such other course as appears to the officer holding the trial best calculated to do justice.

## NOTE

1. See I. A. A. 85 and notes. Only the Judge-Advocate-General in India or the Deputy Judge-Advocate-General of a Command can issue a commission and then only when action is initiated by a court-martial. An Assistant Judge-Advocate-General cannot issue a commission. Cases in Commands in which there is not a Deputy Judge-Advocate-General must be referred to the Judge-Advocate-General in India.

2. At a summary court-martial the court may, for instance, acquit the accused forthwith, or order his release without prejudice to his subsequent trial should the witness become available.

**125. Withdrawal of witnesses from court.**—During the trial a witness, other than the prosecutor, shall not, except by special leave of the court, be permitted

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to be present in court while not under examination and if, while he is under examination, a discussion arises as to the allowance of a question, or the sufficiency of his answers, or otherwise as to his evidence, he may be directed to withdraw.

## NOTES

1. It is customary to have all witnesses present in court while the members of the court are being sworn, but they should withdraw before the arrangement. This does not, of course, apply to the prosecutor if a witness.

Permission to remain in court while not under examination may reasonably be given, e.g., to expert or professional witnesses, provided that no objection is made by or on behalf of the accused.

2. If any such discussion arises as is mentioned in the rule, the court should generally order the witness to withdraw, as his answer might be influenced by the discussion.

**126. Oath or affirmation to be administered to witnesses.**—An oath or affirmation shall be administered to every witness, before he gives his evidence by a member of the court, the judge-advocate, or some other person empowered by the Court in one of the following forms or in such other form to the same purport as the Court ascertains to be according to the religion or otherwise binding on the conscience of the witnesses.

*Form of oath.*

“I swear by Almighty God that what I shall state shall be the truth, the whole truth, and nothing but the truth.”

*Form of Affirmation.*

“I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth.”

## NOTES

1. For manner of administering and taking oaths and affirmations, see notes to rr. 35 and 37.

The following is a translation into Urdu of the above affirmation:—

Main Khudā-Taālā ko hāzīr o-nāzīr jānkar (Parmeshwar ko jān mānkar) imān se (dham se) iqrār kartā (bachan detā) hun, kih jo kuchh kahungā sach kahunga.

The following is a translation into Pushto:—

Zah Pāk Khudāi Taālā ta hāzīr au nāzīr ganram au la inian sara iqrār kawam che har tsa wāyam rikkhtiyā wāyam au baghair la rikkhtiya na ba nor tsa na wāyam.

Sikhs are sworn on the Granth. The words of the oath are as follows:—

Main Sri Gurti Granth Sāhib ji ki sauggnd khākār kahtā hum, kih jo kuchh kahunga sach kahunga.

2. As to power of dealing with recalcitrant witnesses, see I. A. A. 38 (in the case of persons subject to the Indian Army Act) and Rule 136 (in other cases).

**127. Mode of questioning witness.**—(A) Every question shall be put to a witness orally by the officer holding the trial, by the prosecutor, by or on behalf of the accused, or by the judge-advocate, and the witness will forthwith reply, unless an objection is made by the court, judge-advocate, prosecutor, or accused, in which case he shall not reply until the objection is disposed of. The witness shall address his reply to the court.

(B) The evidence of a witness as taken down shall be read to him after he has given all his evidence and before he leaves the court, and shall, if necessary, be corrected.

(C) If the witness denies the correctness of any part of the evidence when the same is read over to him, the court may instead of correcting the evidence, record the objection made to it by the witness.

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(D) If the evidence is not given in English and the witness does not understand that language the evidence as recorded shall be interpreted to him in the language in which it was given, or in a language which he understands.

(E) Where evidence is recorded by shorthand writer, it shall not be necessary to read the evidence of the witness to him under sub-rule (b) or (d), if, in the opinion of the court and the Judge-Advocate, if any (such opinion to be recorded in the proceedings) it is unnecessary so to do, but nevertheless if any witness so desires, his evidence shall be read to him.

## NOTES

(A) 1. The court and judge-advocate must carefully listen to the actual questions put by the prosecutor and by or on behalf of the accused, as well as to the form in which such questions are put, and they must intervene before the witness replies, if, in their opinion, any question is improper or "leading". If either the prosecutor or the accused, or the officer or counsel representing him, considers that a particular question about to be put by him may be objected to, he should submit the propriety of the question to the decision of the court, having first informed the witness that he must not make his reply until the decision of the court has been given.

2. See Pt. I, ch. V, paras 86 *et seq.*

A witness is first examined by the person calling him, then cross-examined by the opposite party, after which he may be re-examined by the party calling him on matters raised by the cross-examination. The court should, if requested by either party, allow the cross-examination of a witness by that party to be postponed, especially if his evidence comes as a surprise; see also r. 121 where a witness is called whose evidence is not contained in the summary or abstract of evidence. A request for postponement should not be acceded to, if, in the opinion of the court, it is made for purposes of obstruction.

(B) When the evidence of a witness has been read to him, he should be asked whether it is correct. Any material alteration or explanation should be inserted at the end of the record of his evidence, and not by way of interlineation or erasure.

If the witness makes any explanation or correction, the prosecutor and accused or counsel or defending officer may respectively examine him respecting the same.

**128. Questions to witnesses by court or judge-advocate.**—(A) The president, the judge-advocate (if any), or the officer holding the trial and, with the permission of the court, any member of the court may address a question to a witness while such witness is giving his original evidence and before he withdraws.

(B) Upon any such question being answered, the president, the judge-advocate (if any), or the officer holding the trial, shall also put to the witness any question relative to that answer which the prosecutor or the accused or counsel or the defending officer may request him to put and which the court deem reasonable.

## NOTES

(A) It will be noted that this rule applies only to the original evidence of a witness and not to any evidence given by him on being recalled. As to recalled witnesses, see r. 129.

It is desirable that any questions should be put after the conclusion of the examination, cross-examination and re-examination (if any) of the witness; but questions may properly be put to a witness during his examination in order that his evidence may be clearly recorded.

(B) The president, judge-advocate or officer holding the trial should always, under the provisions of this rule, put any question which they are requested by the prosecutor, or by or on behalf of the accused, to put and which does not seem unreasonable. It is to be noted that members of the court other than the president are not empowered, in the circumstances mentioned in this paragraph, to put questions.

**129. Re-calling of witnesses and calling of witnesses in reply.**—(a) At the request of the prosecutor or of the accused, a witness may, by leave of the court, be recalled at any time before the closing address of or on behalf of the accused (or at a summary court-martial at any time before the finding of the court) for the purpose of having any question put to him through the president, the judge-advocate (if any), or the officer holding the trial.

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(b) The court may, if they consider it expedient, in the interests of justice, so to do, allow a witness to be called or recalled by the prosecutor, before the closing address of or on behalf of the accused, for the purpose of rebutting any material statement made by a witness for the defence or for the purpose of giving evidence on any new matter which the prosecutor could not reasonably have foreseen.

(c) Where the accused has called witnesses to character, the prosecutor before the closing address of or on behalf of the accused, may call or re-call witnesses for the purpose of proving a previous conviction or entries in the defaulters' book against the accused.

(d) The court may call or re-call any witness at any time before the finding, if they consider that it is necessary for the ends of justice.

## NOTES

(A) The president, judge-advocate or officer holding the trial should also put to a witness recalled under the provisions of this paragraph any further questions which they consider necessary in view of the answer given.

(B) Paras. (b) and (c) of this rule are inapplicable to summary courts-martial when there is no prosecutor. Para. (d) will, however, admit of the officer holding the trial calling or re-calling witnesses in similar circumstances when the ends of justice require it. See also r. 105.

(d) The power given under this provision of calling or recalling a witness should only be exercised in exceptional circumstances, e.g., where it appears for the first time from the evidence given at the trial that a person, who has not been called either by the prosecutor or on behalf of the defence, was present at, and probably witnessed, the occurrence which forms the subject of the charge which is being tried. Witnesses should not be called or recalled under this provision in order to supplement any negligent conduct on the part of the prosecution. If witnesses are called or recalled under this provision, the prosecutor and the accused should be invited to put or suggest any relevant questions which in their opinion should be put by the court. If new evidence is given after the closing address by or on behalf of the accused, the court should permit the accused or his representative to make a further address upon the new matter which has been elicited (if any).

*Addresses.*

**130. Addresses may be in writing.**—All addresses by the prosecutor and the accused and the summing-up of the judge-advocate may either be given orally or be in writing, and, if in writing, shall be read in open court.

## NOTE

Nevertheless the summing-up of the judge-advocate should invariably be in writing.

*Insanity.*

**131. Provision as to finding of insanity.**—Where the court finds either that the accused is of unsound mind and consequently incapable of making his defence or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the president or the officer holding the trial shall date and sign the finding; and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted to the confirming officer, or the prescribed officer, as the case may be, to whom the case is reported under sub-section (1) of section 103A of the Act.

## NOTE

1. See I. A. A. 103A and notes.
2. For form of finding, see p. 387.
3. For "prescribed officer", see r. 169(1).

*Preservation of proceedings.*

**132. Preservation of proceedings.**—(A) The proceedings of a court-martial (other than a summary court-martial) shall, after promulgation, be forwarded, as

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circumstances require, to the office of the Judge-Advocate-General in India, and there preserved for not less in the case of a general court-martial, *than seven years*, and in the case of any other court-martial, *than three years*.

(B) The proceedings of a summary court-martial shall be preserved for not less than three years, with the records of the corps or department to which the accused belonged.

**133. Right of person tried to copies of proceedings.**—Every person tried by a court-martial shall be entitled on demand, at any time after the confirmation of the finding and sentence, when such confirmation is required, and before the proceedings are destroyed, to obtain from the officer or person having the custody of the proceedings, a copy thereof, including the proceedings upon revision, if any, upon payment for the same of a sum not exceeding eight annas for the first two hundred words, and half that rate for each subsequent two hundred words, or part thereof.

**134. Loss of proceedings.**—(A) If, before confirmation, the original proceedings of a court-martial, which require confirmation, or any part thereof, are lost, a copy thereof, if any, certified by the president of or the judge-advocate at the court-martial may be accepted in lieu of the original.

(B) If there is no such copy, and sufficient evidence of the charge, finding, sentence, and transactions of the court can be procured, that evidence may, with the assent of the accused, be accepted in lieu of the original proceedings, or part thereof lost.

(C) In any case above in this rule mentioned, the finding and sentence may be confirmed, and shall be as valid as if the original proceedings, or part thereof, had not been lost.

(D) If the accused refuses the assent referred to in sub-rule (B), he may be tried again, and the finding and sentence of the previous court of which the proceedings have been lost shall be null.

(E) If, after confirmation or in any case where confirmation is not required, the original proceedings of a court-martial or any part thereof are lost, and there is sufficient evidence of the charge, finding, sentence, and transactions of the court and of the confirmation (if required) of the finding and sentence, that evidence shall be a valid and sufficient record of the trial for all purposes.

## NOTES

(A) 1. Confirmation is not complete until finding and sentence have been promulgated; see r. 58.

2. As to annexure to the proceedings of original documents, see note 2 to r. 56.

(B) The evidence may be obtained by the president or some member of the court writing out from memory the substance of the charge, finding, sentence and transactions of the court, which should be authenticated by the signatures of the members. A copy of the charge, however, should always be procured if possible.

As soon as it is known that the proceedings have been lost, steps should be taken to obtain and preserve the best evidence available.

*Irregular Procedure when no injustice is done.*

**135. Validity of irregular procedure in certain cases.**—Whenever it appears that a court-martial had jurisdiction to try any person and make a finding and that there is legal evidence or a plea of guilty to justify such finding, such finding and any sentence which the court-martial had jurisdiction to pass thereon may (if confirmation is necessary) be confirmed, and shall, if so confirmed, and in all cases where confirmation is not necessary, be valid, notwithstanding any deviation from these rules, or notwithstanding that the charge-sheet has not been signed by the commanding officer or the convening officer, provided that the charges have,



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in fact, before trial been approved by the commanding officer and the convening officer or notwithstanding any defect or objection, technical or other, unless it appears that any injustice has been done to the offender, and where any finding and sentence are otherwise valid they shall not be invalid by reason only of a failure to administer an oath or affirmation to the interpreter or shorthand writer; but nothing in this rule shall relieve an officer from any responsibility for any wilful or negligent disregard of any of these rules.

## NOTES

1. The rule is intended to enable proceedings of a court-martial to be validly confirmed although there may be a technical objection to the charge or charges. For example, where the charge is bad for duplicity and it is obvious that no injustice was done because the accused pleaded guilty and never took objection to the charge, the proceedings can be validly confirmed notwithstanding that defect. But before acting upon this rule the confirming officer must be satisfied that the accused has not suffered any injustice through any deviation from the Rules, or through any defect or objection. Whether or not a deviation, etc., is of a substantial kind will often depend upon the circumstances. The court should not allow any technicality to interfere with the accused in the making of his defence.

2. The confirming officer should always direct the attention of all officers concerned to deviations and defects which have been observed and for which they are responsible.

3. It may be convenient to note here that if, after confirmation, the charges are declared to be invalid, the trial must be treated as null, the conviction set aside, the person convicted relieved of all consequences of his trial and the record of the conviction erased.

As to the substitution of valid finding and sentence for invalid finding and sentence, see I. A. A. 103 and notes thereto.

4. As to review of summary courts-martial, see I. A. A. 102 and note to r. 112.

*Offences of Witnesses and others.*

**136. Offences of witnesses and others.**—When any court-martial is of opinion that there is ground for inquiring into any offence specified in section 38 of the Act and committed before it or brought under its notice in the course of its proceedings, or into any act done before it or brought under its notice in the course of its proceedings which would, if done by a person subject to the Act, have constituted such an offence, such court-martial may proceed as follows, that is to say—

(A) If the person who appears to have committed the offence is subject to the Act, the court may bring his conduct to the notice of the proper military authority, and may also order him to be placed in military custody with a view to his punishment by any officer exercising authority under section 20 of the Act or to his trial by court-martial.

(B) If the person who appears to have done the act is subject to the Army Act, the court may bring his conduct to the notice of the proper military authority.

(C) If the person who appears to have done the act is subject neither to the Act nor to the Army Act, then in the case of acts which would, if done by a person subject to the Act, have constituted an offence under clause (a) of section 38 of the Act, the officer who summoned the witness to appear or the president or officer holding the court, as the case may be, may forward a written complaint to the nearest Magistrate of the first class having jurisdiction, and in the case of acts which would, if done as aforesaid, have constituted an offence under clause (b) or clause (c) of the said section, the Court, after making any preliminary enquiry that may be necessary, may send the case to the nearest Magistrate of the first class having jurisdiction for enquiry or trial in accordance with section 476 of the Code of Criminal Procedure, 1898.

## NOTES

(A) 1. An act includes an illegal omission. See I.A.A. 7 (22) and Indian Penal Code, s. 32.

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2. When a person subject to the Indian Army Act commits an offence under clause (A) or (B) of section 38, or when a corresponding offence is committed by a person subject to the (British) Army Act or by a civilian, courts-martial will often act wisely in accepting an apology sufficient to vindicate their dignity instead of resorting to the more severe measures here indicated. As already pointed out (r. 65, note) the best course to adopt when a person, other than the accused, interrupts the proceedings will ordinarily be to order his exclusion from the court.

3 Courts-martial should exercise the greatest discretion in instituting proceedings or in taking measures which may result in the institution of proceedings, against a person subject to the Indian Army Act for the offence specified in clause (c) of section 38, or against a person subject to the (British) Army Act, or a civilian for a corresponding offence. It is not enough that the court-martial has by its verdict shown that it did not believe the witness, for it may have thought him to be mistaken or, on the balance of probabilities, it may have accepted another version of what took place. Before instituting proceedings as indicated in this rule against a witness the court should be satisfied that there are good grounds for believing that the witness has wilfully given false evidence on some point which is material to the issue, and that his conviction is likely. The credit of another witness is a point material to the issue.

When it is likely that a witness will be prosecuted for giving false evidence the exact words used, in the language in which the evidence was given, should be recorded. See r. 78 (B) and note.

4 In the case of a person subject to the Indian Army Act, the court-martial may, in its discretion, either merely report his conduct to the proper military authority, or may in addition order him into military custody pending disposal of his case.

If a person is so ordered into custody this fact should be mentioned in the report; and it then becomes the duty of the officer receiving the report to see that the case is promptly investigated in accordance with section 124 (3) of the Indian Army Act. The report should be in sufficient detail to place the officer in full possession of the facts and enable him to exercise his discretion whether to order trial by court-martial if he is competent to do so, or to direct other summary disposal of the case, or to refer it to superior authority.

As to "proper military authority", see r. 2 (A). This will depend on the status of the offender, and the authority under whose orders the court has been convened.

In the case of a summary court-martial the officer holding the trial would ordinarily report to the officer commanding the district or brigade, and a general or district court-martial would report to the convening officer, observing in each case the usual channel of correspondence.

5. As explained in the notes to I.A.A. 38, the members of a court-martial reporting an offender under this rule are individually disqualified [r. 29 (B) (iii) and (v)] from trying him on charges arising out of their report. Thus although there is no restriction similar to that contained in section 28 of the (British) Army Act, the result is practically the same, and the officer to whom the case is finally referred if he decides on trial must convene a new court for the purpose. For similar reasons it is undesirable that a commanding officer should try by summary court-martial a person under his command who has offended against his authority when holding a summary court-martial or when sitting as a member of a general or district court-martial. He could, save in grave emergency, only do so with the sanction of superior authority, which should, therefore, as a rule, be withheld.—I.A.A. 74, proviso (b).

(B) 1. Over a person subject to the (British) Army Act a court-martial convened or assembled under the Indian Army Act has, as such, no authority and cannot as a court order him into military custody. This clause, therefore, enables the court merely to report offences of contempt or of giving false evidence committed by such persons to the proper military authority for disposal under the Army Act. The president (if a British officer) has, however, in his individual capacity, authority over such an offender, if his junior in rank and may, in that capacity, order such offender into military custody under the provisions of section 45 of the Army Act. This individual authority should be rarely exercised and, as a rule, only when justified by cases of gross disrespect or violence towards the court.

2. If the trial of a person against whom action has been taken under para. (B) of this rule is ordered, the charge can only be framed under section 40 of the Army Act as a court-martial convened under the Indian Army Act is not a "court-martial" for the purposes of charges under section 28 of the (British) Army Act.

For the converse case, i.e., when a person subject to the Indian Army Act commits contempt or gives false evidence before a court-martial convened under the (British) Army Act, see notes to I.A.A. 38.

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(c) 1. This paragraph deals with civilian offenders; sections 195 and 476 of the Code of Criminal Procedure provide for the institution of proceedings for certain offences against the Indian Penal Code on the written complaint of the public servant concerned or of the court before which the offence complained of was committed. A court-martial is a "criminal court" for the purpose of the above sections and is also a "court of justice" for the purposes of the Indian Penal Code. See Code of Criminal Procedure, section 6 and Indian Penal Code, section 20. The effect of this is that all the acts and omissions which are punishable under I.A.A. 38, clause (a), when committed by persons subject to that Act, are, when committed by civilians, offences under sections 174, 175, 178, and 179 of the Indian Penal Code, for which the officer who summoned the witness to appear or the officer conducting the proceedings of the court-martial, as the case may be, can institute proceedings under section 195, sub-section (1), clause (a), of the Code of Criminal Procedure; and that all acts and omissions which are punishable under I.A.A. 38, clauses (b) and (c), when committed by persons subject to that Act are, when committed by civilians, offences under sections 193, 194 and 228 of the Indian Penal Code for which the aggrieved court-martial can institute proceedings under section 476 of the Code of Criminal Procedure. Before instituting such proceedings the officer [in the case of offences corresponding to those in I.A.A. 38, clause (a)] and a court-martial [in the case of offences corresponding to those in I.A.A. 38, clauses (b) and (c)] must *prima facie* be satisfied that a definite offence has been committed by some definite person or persons against whom proceedings in a criminal court are to be taken. It is not sufficient that the circumstances may raise some sort of a suspicion against someone. In such a case the officer or the court-martial, as the case may be, should either allow the matter to drop, or should make or hold a preliminary enquiry to see who is to be prosecuted and for what. A court's decision to institute proceedings must be a judicial one, *i.e.*, either based on what the court has itself heard or seen and considered, or on evidence taken before it and considered. Similarly an officer's decision to institute proceedings must be a reasonable one, based on sufficient grounds.

The report to the magistrate may be in letter form, and should be sufficiently detailed to place him in full possession of all the materials on which the decision to prosecute was based. It should set forth the name and identity of the person accused and of the witnesses who can substantiate the accusation. A narrative of the events complained of should be included in the report and a record of the evidence taken in the preliminary inquiry (if any) attached.

2. In the case of a person subject to the Air Force Act the proper course is to report the offence to the proper Air Force authority, though proceedings could be taken under para. (c) of this rule. Neither a court martial convened or assembled under the Indian Army Act nor, ordinary, a "British officer" in his individual capacity can order a person subject to the Air Force Act into air force custody; when, however, by reason of the application of section 184A of the Air Force Act, the British officer has powers as if he were an Air Force officer in relation to the person subject to the Air Force Act, he could, if necessary, order that person into air force custody.

3. If a case arises in which it appears necessary to resort to the provisions of section 476 of the Code of Criminal Procedure when outside of British India, the officer of the court-martial, as the case may be, should, in the first instance, ascertain that the civilian concerned is amenable to the laws of British India. Pending a decision on this point the court-martial should content itself with excluding him from the room in which its proceedings are held, if such a course appears to be necessary. For list of places which, though in India are not in British India, see notes to I.A.A. 41. In such places the local political officer will generally be the person empowered to administer British Indian criminal law as against person subject thereto, and should be consulted as to whether any civilian whom it is proposed to prosecute is subject to his jurisdiction.

## SECTION 5.—SUMMARY GENERAL COURTS-MARTIAL.

The foregoing rules in this Chapter shall not, save as hereinafter mentioned, apply to summary general courts-martial which shall be subject to the following rules:—

**137. Convening the court and record of proceedings.**—(A) The court may be convened and the proceedings of the court recorded in accordance with the form in the Third Appendix to these rules, with such variations as the circumstances of each case may require.

(n) The officer convening the court shall appoint or detail the officers to form the court, and may also appoint or detail such officers as waiting members

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as he thinks expedient. Such officers should have held commissions for not less than one year, but, if any officers are available who have held commissions for not less than three years, they should be selected in preference to officers of less service.

(c) The provost-marshal, an assistant provost-marshal, or an officer who is a prosecutor or witness for the prosecution shall not be appointed a member of the court, but subject to sub-rule (b) any other available officer may be appointed to sit.

## NOTES

1. In the convening order the members and waiting members (if any) may be appointed by name, or only their ranks and units may be mentioned. In the latter event, the ranks, names, etc., of the members of the court as constituted will be recorded in the proceedings.

2. If necessary, an officer of less than one year's standing may legally sit as a member. The requirement, therefore, that members of the court should have held commissions for not less than one year does not justify a court in substituting a waiting member for a member with less than a year's commissioned service who has been detailed or appointed by the convening officer.

3. The convening order must be signed personally by the convening officer.

**138. Charge.**—The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Act.

**139. Trial of several accused persons.**—The court may be sworn at the same time to try any number of accused persons then present before it, but, except as provided in Rule 24, the trial of each accused person will be separate.

**140. Challenges.**—(A) The names of the president and members of the court shall be read over to the accused who shall thereupon be asked if he objects to be tried by any of these officers.

(B) Any objection will be decided as provided for in section 80 of the Act and rules 34 and 75—the vacancies being filled from among the waiting members (if any) or by fresh members being appointed by the convening officer.

**141. Swearing or affirming the court.**—(A) As soon as the court is constituted with the proper number of officers who are not objected to, or the objections to whom have been overruled, an oath or affirmation shall be administered to every member in such of the forms laid down in Rule 35 as shall be appropriate, or in such other form to the same purport as the court ascertain to be according to his religion or otherwise binding on his conscience.

(B) If a judge-advocate or an interpreter has been appointed, the appropriate oath or affirmation, as laid down in Rule 36, shall be administered to him.

(C) All oaths and affirmations shall be administered by a member of the court or by some person empowered by the court to do so.

**142. Arraignment.**—When the court are sworn or affirmed, the president shall state to the accused then to be tried, the offence with which he is charged, with, if necessary, an explanation giving him full information of the act or omission with which he is charged and shall ask the accused whether he is guilty or not guilty of the offence.

## NOTES

1. As to objection by accused to charge, see r. 39, which by Rule 150 is applied, so far as practicable, to a summary general court-martial. As to responsibility of president, see r. 65.

2. As to general plea of "Guilty" or "Not guilty", see r. 42 and notes: as to procedure after plea of "Guilty", see r. 44. Both these rules are, by Rule 150, applied, so far as practicable, to a summary general court-martial.

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A plea of "Guilty" will not be accepted by the court if the charge or charges upon which an accused is arraigned render him liable, on conviction, to be sentenced, to death. If such plea is offered, the court will enter a plea of "Not guilty" and proceed with the trial accordingly. See r. 42 (D) which in all cases will be applied to a summary general court-martial.

**143. Plea to jurisdiction.**—If a special plea to the general jurisdiction is offered by the accused, and is considered by the court to be proved, the court shall report the same to the convening officer.

## NOTE

See r. 41, which by Rule 150 is applied, so far as practicable, to a summary general court-martial, and notes.

**144. Evidence.**—(A) The witnesses for the prosecution will be called and the accused shall be allowed to cross-examine them and to call any available witnesses for his defence.

(B) An oath or affirmation as laid down in Rule 126 shall be administered to every witness, before he gives his evidence, by one of the persons specified in that rule.

## NOTE

(A) Although by Rule 150 only a limited number of the foregoing rules are applied, so far as practicable, to summary general courts-martial, the procedure to be adopted at a summary general court-martial should be the same as at a general or district court-martial.

**145. Defence.**—The accused shall be asked what he has to say in his defence, and shall be allowed to make his defence. He may be allowed to have any person to assist him during the trial, whether a legal adviser or any other person.

## NOTES

1. See note to r. 144.

As to the rights of the accused to prepare his defence, see r. 22, which by Rule 150 is applied, so far as practicable, to a summary general court-martial.

2. See rr. 81-87. If the person assisting is an officer subject to military law or a counsel [see r. 87 (B)] he may be allowed full privileges of address, etc.

**146. Record of the evidence and defence.**—The president of the court shall take down or cause to be taken down a brief record of the evidence of the witnesses at the trial and of the defence of the accused; the record so taken down shall be attached to the proceedings:

Provided that, if it appears to the convening officer that military exigencies or other circumstances prevent compliance with this provision, he may direct that the trial may be carried on without any such brief record being taken down.

If the accused pleads "Guilty" the summary or abstract of evidence, if any, may be read and attached to the proceedings, and it shall not be necessary for the Court to hear witnesses for the prosecution, respecting matters contained in the summary or abstract of evidence so read.

## NOTE

It would hardly ever be necessary for the convening officer to give such a direction as is mentioned in the proviso. If he does so, he must record it in his order convening the court and state shortly the exigencies or other circumstances which appear to him to prevent compliance with this rule.

**147. Finding and sentence.**—The court shall then be closed to consider its finding. If the finding on any charge is "Guilty" the court may receive any evidence as to previous convictions and character which is available. The court shall then deliberate in closed court as to its sentence.

## NOTE

As to voting of members, see I.A.A. 81.

For votes required before a sentence of death can be passed, see I.A.A. 87.



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**148. Proceedings after sentence or finding.**—(A) If the proceedings do not require confirmation, the result shall be announced in open court and the sentence carried into effect as soon as possible.

(B) If the proceedings require confirmation they shall be transmitted without delay to the confirming officer and the sentence (if any) carried out as soon as possible after his confirmation has been received.

## NOTE

(A) 1. As to when confirmation is necessary, see I.A.A. 98.

2. If a sentence of imprisonment not requiring confirmation is passed, the president, when passing sentence, must consider the provisions of section 3 (I) of the Indian Army (Suspension of Sentences) Act (see part III). The notes to that section should also be consulted.

(B) 1. *e.g.*, if the sentence is one of transportation or imprisonment, it shall be carried out unless the sentence has been suspended or the confirming officer has directed that the offender be not committed pending the orders of a superior military authority as to suspensions of sentence.

2. See also I.A.A. 49A as to retention to serve in the ranks of a person sentenced on active service to transportation, imprisonment or dismissal.

**149. Adjournment.**—(A) A summary general court-martial may adjourn from time to time and from place to place and may when necessary view any place.

(B) The proceedings shall be held in open court, in the presence of the accused, except on any deliberation among the members when the court may be closed.

**150. Application of rules.**—The foregoing rules—15 (Disposal of the charge or adjournment for taking down the summary of evidence), 16 (Remand of accused), 17 (Procedure on charge against Indian commissioned officer), 22 (Rights of accused to prepare defence), 23 (Warning of accused for trial), 25 (Suspension of rules on the ground of military exigencies or the necessities of discipline), 39 (Objection by accused to charge), 41 (Special plea to the jurisdiction), 42 (General plea of "Guilty" or "Not guilty"), 43 (Plea in bar), 44 (Procedure after plea of "Guilty"), 50 (Consideration of finding), 51 (Form and record of finding), 53 (Procedure on conviction), 58 (Promulgation), 59 (Mitigation of sentence on partial confirmation), 61 (Confirmation notwithstanding informality in, or excess of, punishment), 65 (Responsibility of president), 66 (Power of court over address of prosecutor and accused), 80 (Transmission of proceedings after finding), 81 (Defending officer and friend of accused), 131 (Provision as to finding of insanity), 89-91 (Judge-Advocate), 132 (Preservation of proceedings), 133 (Right of persons tried to copies of proceedings), 134 (Loss of proceedings), 135 (Validity of irregular procedure in certain cases), shall, so far as practicable, apply as if a summary general court-martial were a district court-martial.

## NOTE

See also rr. 133, 140 (B), 141 and 144 (B).

**151. Evidence of opinion of convening officer.**—Any statement in an order convening a summary general court-martial as to the opinion of the convening officer shall be conclusive evidence of that opinion, but this rule shall not prejudice the proof at any time of any such opinion when not so stated.

## SECTION 6.—EXECUTION OF SENTENCES.

**152. Committal warrants.**—A warrant for the committal of a person sentenced by a court-martial to a prison under the provision of section 107 of the Act shall be in one of the forms given in the Fourth Appendix to these Rules. Such warrant shall be signed by the commanding officer of the prisoner or by any higher authority or his staff officers.

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**153. Warrants under section 109 of the Act.**—Any warrant issued under the provisions of section 109 of the Act shall be in one of the forms given in the Fourth Appendix to these rules, and shall be signed by the officer making the order in pursuance of which such warrant is issued, or by his staff officer.

**154. Sentence of cashiering or Dismissal.**—A sentence of cashiering or dismissal awarded by a court-martial shall take effect from the date on which the sentence is promulgated to the person under sentence, or except in the case of an Indian commissioned officer from such subsequent date as may be specified by the commanding officer at the time of such promulgation :

Provided that, when dismissal is combined with imprisonment, which is carried out in a military prison or in military custody or with field punishment, the dismissal shall not take effect until the date on which the prisoner is duly released from a military prison or military custody, or until the completion of the field punishment, unless such field punishment is remitted by competent authority :

Provided also that, when cashiering or dismissal is combined with transportation or with imprisonment which is carried out in a civil prison, the cashiering or dismissal shall not take effect until the date on which the prisoner is received into a civil prison.

## NOTES

1. Under I.A.A. 17, a discharge certificate must be furnished to every enrolled person who is dismissed from the service (see also r. 11). An Indian commissioned officer, not being an enrolled person, is not furnished with a discharge certificate.

2. A sentence of cashiering or dismissal awarded by a court-martial to an Indian commissioned officer takes effect from the date of promulgation, or, when combined with transportation or with imprisonment, from the date on which the prisoner is received into a civil prison. The sentence is notified in the Gazette of India.

3. It may sometimes be expedient for a commanding officer, in order to keep a person sentenced to dismissal (other than an Indian commissioned officer) subject to military law for a short period, to specify a date subsequent to the date of promulgation. If he considers such action desirable he must do so at the time of the promulgation of the sentence to the person and he should record the date he specifies in the minute of promulgation. When a commanding officer exercises this option of specifying a subsequent date, the date specified must be strictly limited by the requirements of the case. For instance, in the case of a person sentenced out of India to dismissal alone, or to dismissal combined with imprisonment which is carried out locally either in military custody or for special reasons in local civil custody (section 108 of the Act), the subsequent date might be "date of disembarkation" or "date of embarkation" according to whether the intention is to despatch the person to India on a transport or by a private vessel. It is obviously desirable to keep the person subject to military discipline while travelling on a transport or until he can be despatched to India. If the person is to be sent by a transport the commanding officer can enter in the discharge certificate "date of disembarkation" as the date from which the dismissal takes effect.

4. The effect of the second proviso is that a prisoner under sentence of cashiering or dismissal combined with imprisonment which is carried out in a civil prison or with transportation remains subject to the Act until he is received into a civil prison in India. The commanding officer should enter on the discharge certificate the date of admission into a civil prison as the date from which the dismissal takes effect, or, in the case of an Indian commissioned officer, report the date of admission to the proper military authority.

**154A. Custody of person under sentence of death.**—When a person is sentenced by a court-martial to suffer death and such sentence has been confirmed, the Commanding Officer for the time being of such person may, if he thinks fit, by a warrant in one of the forms in the Fifth Appendix commit the said person for safe custody in a civil prison pending the carrying out of the sentence.

**154B. Carrying out of sentences of death.**—Upon the receipt of an order to carry out a sentence of death, the officer to whom the order is issued shall :—

(i) If the person sentenced has been committed to a civil prison under rule 154A, obtain custody of his person by issuing a warrant in one of the forms in the Fifth Appendix ;

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(ii) Inform the person sentenced as soon as possible that the sentence has been confirmed and of the date on which the sentence will be carried out;

(iii) Proceed to carry out the sentence as required by the order and in accordance with any general or special instructions which may from time to time be given by or under the authority of the Commander-in-Chief in India.

**154C. Procedure on commutation of sentence of death.**—If a sentence of death is commuted under the Act or if the person sentenced to death is pardoned and

(i) if he has been committed to a civil prison under a warrant issued under rule 154-A a further warrant in one of the forms given in the Fifth Appendix to these Rules shall be issued by the Commanding Officer of such person.

(ii) if he has been detained in military custody, any warrant which may be necessary to give effect to the sentence as so commuted, shall be issued in one of the forms given in the Fourth Appendix to these Rules.

## SECTION 7.—FIELD PUNISHMENT.

**155. Field Punishment.**—(1) A court-martial or an officer exercising authority under section 20 of the Act may, for the purpose of awarding field punishment under the Act, sentence an offender for a period not exceeding, in the case of a court-martial, three months, and in the case of such an officer, twenty-eight days, to one of the following punishments, namely :—

(a) Field Punishment No. 1.

(b) Field Punishment No. 2.

(2) Where an offender is sentenced to field punishment No. 1, he may, during the continuance of his sentence, unless the court-martial or the officer, as the case may be, otherwise directs, be punished as follows :—

(a) He may be kept in irons, that is to say in fetters or hand-cuffs or both fetters and hand-cuffs, and may be secured so as to prevent his escape.

(b) When in irons, he may be attached for a period or periods not exceeding two hours in any one day to a fixed object, but he must not be so attached during more than three out of any four consecutive days, nor during more than twenty-one days in all.

*Explanation (1).*—The offender must be attached so as to be standing firmly on his feet which, if tied, must not be more than twelve inches apart, and it must be possible for him to move each foot at least three inches. If he is tied round the body there must be no restriction of his breathing. If his arms or wrists are tied, there must be six inches of play between them and the fixed object. His arms must hang either by the side of his body or behind his back.

*Explanation (2).*—For the purposes of this punishment, irons should be used when available, but straps or ropes may be used in lieu of them when necessary. Any straps or ropes used for this purpose must be of sufficient width to inflict no bodily harm, and leave no permanent mark on the offender.

(c) He may be subject to the like labour, employment and restraint, and dealt with in like manner as if he were undergoing a sentence of rigorous imprisonment.

(3) Where an offender is sentenced to field punishment No. 2, the provisions of sub-rule (2) with respect to field punishment No. 1 shall apply in his case except that he shall not be liable to be attached to a fixed object as provided in clause (b) of that sub-rule.

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(4) Every portion of a field punishment shall be inflicted in such a manner as is calculated not to cause injury or leave any permanent mark on the offender and a portion of a field punishment must be discontinued upon a report by a responsible medical officer that the continuance of that portion would be prejudicial to the offender's health.

(5) Field punishment will be carried out regimentally when the unit to which the offender belongs or is attached is actually on the move, but when the unit is halted at any place where there is a provost-marshal the punishment will be carried out under the orders of that officer.

(6) When the unit to which the offender belongs or is attached is actually on the move, an offender awarded field punishment No. 1 shall be exempt from the operation of clause (b) of sub-rule (2), but all offenders awarded field punishment shall march with their unit, carry their arms and accoutrements, perform all their military duties as well as extra fatigue duties, and be treated as defaulters.

## CHAPTER V

### COURTS OF INQUIRY

#### *Losses or theft of arms*

**156. Court of Inquiry when rifles, etc., are lost or stolen.**—(A) Whenever any weapon or part of a weapon, which forms part of the equipment of a half squadron, battery, company or other similar unit, and in respect of the loss or theft of which a fine may be imposed under rule 157 is lost or stolen, a court of inquiry shall be assembled, under the orders of the officer commanding the army, army corps, division or independent brigade, to investigate the circumstances under which the loss or theft occurred.

(B) The officer who assembled the court shall direct it to record an opinion as to the circumstances of the loss or theft.

**157. Collective fine may be imposed.**—(A) The officer commanding the army, army corps, division or independent brigade shall then record his opinion on the circumstances of the loss or theft, and may impose for each weapon or part of a weapon lost or stolen collective fines to the extent hereinunder specified on the Viceroy's commissioned officers, warrant officers, non-commissioned officers, and men of such unit or upon so many of them as he considers should be held responsible for the occurrence—

	Rs.
Medium Machine Gun . . . . .	1,800
Lock Breech . . . . .	300
Barrel . . . . .	150
Light Machine Gun . . . . .	1,500
Magazine . . . . .	50
Barrel Assembled . . . . .	300
Block Breech . . . . .	100
2" Mortar Barrels . . . . .	200
3" Mortar Barrels . . . . .	200
Base Plate . . . . .	100
Rifle . . . . .	800
Bolt . . . . .	100
Bayonet . . . . .	15
Discharger Grenade . . . . .	30
Projector Grenade . . . . .	100
Carbine . . . . .	800
Barrel . . . . .	100
Block Breech . . . . .	200
Magazine . . . . .	50
Pistol Revolver . . . . .	300
Grenades . . . . .	50
Gun Machine Besa 7·92 . . . . .	2,100
Barrel . . . . .	800
Block Breech . . . . .	100
Gun Machine Besa 15 MM . . . . .	6,000
Barrel . . . . .	1,000
Block Breech . . . . .	200



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(B) Such fine will be assessed as a percentage on the pay of the individuals on whom it falls.

## NOTE

See I. A. A. 21 and note.

The effect of this rule is to give the officer imposing the fine a wide discretionary power in determining the amount to be levied on the individuals specified. The fines set out in sub-paragraph (A) are maxima, and it will be for the competent authority to decide, having regard to such considerations as the circumstances of the laws, the pay of the individuals concerned, the vocabulary price of the weapon or component lost and the prevalence of such losses, as to what proportion of the maximum fine should be imposed in each particular case.

*Regulations for courts of inquiry other than courts of inquiry held under Section 126 of the Act.*

**158. Courts of Inquiry.**—(A) A court of inquiry is an assembly of officers or of officers and warrant or non-commissioned officers directed to collect evidence, and if so required to report with regard to any matter which may be referred to them.

(B) A court of inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps.

(C) The court may consist of any number of officers of any rank, or of one or more officers together with one or more warrant or non-commissioned officers. The members of the court may belong to any branch or department of the service, according to the nature of the investigation.

(D) The court shall be guided by the written instructions of the authority who assembled the court. The instructions shall be full and specific, and shall state the general character of the information required. They shall also state whether a report is required or not.

(E) Previous notice should be given of the time and place of the meeting of a court of inquiry, and of all adjournments of the court, to all persons concerned in the inquiry except a prisoner of war who is still absent.

(F) Save in the case of a prisoner of war who is still absent, whenever any inquiry affects the character or military reputation of a person subject to military law, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation, and producing any witnesses in defence of his character or military reputation. The president of the court shall take such steps as may be necessary to ensure that any such person so affected, and not previously notified, receives notice of and fully understands his rights, under this rule.

(G) It is the duty of a court of inquiry to put such questions to a witness as they think desirable for testing the truth or accuracy of any evidence he has given, and otherwise for eliciting the truth.

(H) When a court of inquiry is held on prisoners of war, and in any other case in which the officer who assembled the court has so directed, the evidence shall be taken on oath or affirmation, in which case the court shall administer the same oath or affirmation to witnesses as if the court were a court-martial.

The officer who assembled the court shall, when the court is held on a returned prisoner of war or on a prisoner of war who is still absent, direct the court to record their opinion whether the person concerned was taken prisoner through his own wilful neglect of duty, or whether he served with or under,

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or aided the enemy; he shall also direct the court to record their opinion in the case of a returned prisoner of war, whether he returned as soon as possible to the service, and in the case of a prisoner of war still absent whether he failed to return to the service when it was possible for him to do so. The officer who assembled the court shall also record his own opinion on these points. In other cases the court shall give no opinion on the conduct of any person unless so directed by the officer who assembled the court.

(i) The members of the court shall not themselves be sworn or affirmed, but when the court is a court of inquiry on recovered prisoners of war the members shall make the following declaration :

*I, A. B., do declare upon my honour that I will duly and impartially inquire into and give my opinion as to the circumstances in which.....became a prisoner of war, according to the true spirit and meaning of the Regulations of the Army; and I do further declare, upon my honour, that I will not on any account, or at any time disclose or discover my own vote or opinion or that of any particular member of the court, unless required to do so by competent authority.*

(j) The court may be re-assembled as often as the officer who assembled the court may direct, for the purpose of examining additional witnesses, or further examining any witness, or recording further information.

(k) The whole of the proceedings of a court of inquiry shall be forwarded by the president to the officer who assembled the court.

(l) The proceedings of a court of inquiry, or any confession, statement, or answer to a question made or given at a court of inquiry, shall not be admissible in evidence against a person subject to military law, nor shall any evidence respecting the proceedings of the court be given against any such person except upon the trial of such person for wilfully giving false evidence before that court.

(m) Any person subject to the Act who is tried by court-martial in respect of any matter or thing which has been reported on by a court of inquiry, and, unless the Commander-in-Chief in India sees reason to order otherwise, any person so subject whose character or military reputation is, in the opinion of the said Commander-in-Chief, affected by anything in the evidence before, or in the report of a court of inquiry under this or, the following rule, shall be entitled to a copy of the proceedings of the court, including any report made by the court on payment at the rate laid down in Rule 133 for copies of the proceedings of courts-martial.

## NOTES

(A) 1. See generally as to court of inquiry, R. A. I. For disqualification of members of courts of inquiry for serving on subsequent courts-martial see r. 29 (h) (iii). As to privilege of report of court and that of witnesses, see Pt. I, ch. V, paras 94-96.

2. A court of inquiry has no power to compel the attendance of civilian witnesses.

(c) The court should normally consist of three members.

(f) Whenever it appears possible that the character or military reputation of an officer or soldier may be affected as the result of the court of inquiry, the authority who assembles the court will take all necessary steps to secure that the provisions of this rule are observed. The ultimate responsibility of ensuring that they are observed in every case will, however, rest upon the president of the court, and should it transpire during the sitting of the court that the character or military reputation of any officer or soldier is affected by the evidence put forward, the president, will immediately arrange for such officer or soldier to be afforded the full facilities of the rules, adjourning the court if necessary for the purpose of securing his attendance.

(h) As to the authorities who can remit the forfeiture of pay and allowances incurred by absence as a prisoner of war, see r. 165 (c). If the officer who assembles the court is not one of these authorities, he should forward the proceedings with his recommendation, to one of these authorities. A court of inquiry on a prisoner of war who is still absent

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may be assembled in order to assist the authorities prescribed in rr. 165 (c) and 166, in determining what remission of forfeiture of pay and allowances shall be ordered and what provision under section 52A of the Act, shall be made for the dependants of such prisoner of war. A second court of inquiry must be assembled as soon as possible after the return of the prisoner of war. See R. A. 1.

*Regulations for courts of inquiry under section 126 of the Act for the purpose of determining the illegal absence of persons subject to that Act.*

**159. Courts of Inquiry as to illegal absence under section 126 of the Act.—**

(A) A court of inquiry under section 126 of the Act shall, when assembled, require the attendance of such witnesses as they think sufficient to prove the absence and other facts specified as matters of inquiry in that section.

(B) They shall take down the evidence given them in writing and at the end of the proceedings shall make a declaration of the conclusions at which they have arrived in respect of the facts they are assembled to inquire into.

(C) The commanding officer of the absent person shall enter in the court-martial book of the corps or department a record of the declaration of the court, and the original proceedings will be destroyed.

(D) The court of inquiry shall examine all witnesses who may be desirous of coming forward on behalf of the absentee, and shall put such questions to them as may be desirable for testing the truth or accuracy of any evidence they have given and otherwise for eliciting the truth, and the court in making their declaration shall give due weight to the evidence of all such witnesses.

(E) A court of inquiry shall administer the same oath or affirmation to the witnesses as if the court were a court-martial, but the members of such court shall not themselves be sworn or affirmed.

## NOTES

(A) 1. See notes to I. A. A. 126.

2. See note (A) 1 to r. 158.

The court declare that (*number, rank, name*) illegally absented himself for a period of 60 clear days, excluding the day on which the absence commenced and that on which the court assembles.

(B) 1. The court in making their declaration will follow the wording shown below. An exact reproduction of the declaration will be entered in the court-martial book. It should be free from alteration or erasure.

## DECLARATION.

The court declare that (*number, rank, name*) illegally absented himself without leave (or other sufficient cause) at (*station or place*) on the \_\_\_\_\_; that he is still so absent, and that on the (*date on which the inventory of kit was taken*) he was deficient, and that he is still deficient of the following articles (value of equipment and public clothing to be stated).

Name of President  
and members.

}

{

President.

Members.

2. In framing a charge of losing by neglect under I. A. A. 35 (e), the date of taking the inventory should be assigned.

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3. Before a court of inquiry are entitled to find deficiencies, they will require evidence—

- (1) that the absentee has been at some time previously in possession of a complete kit, or, at any rate, of the articles alleged to be deficient;
- (2) that an inventory of his kit has been taken, and at the taking of the inventory certain specified articles were deficient;
- (3) that none of the articles have since been recovered (any articles recovered will, of course, be omitted).

4. When the declaration is to be produced in evidence at a court-martial, a copy will be made on I. A. F. D-918 which is admissible under I. A. A. 91A (4), and will be produced instead of the court-martial book. I. A. F. D-918 must be a correct extract from the court-martial book and free from alteration or erasure.

(E) As to form of oath, see r. 126.

## CHAPTER VI.

### PREScribed OFFICERS, AUTHORITIES AND OTHER MATTERS

**159-A. Prescribed officers under Section 4 of the Act.**—The prescribed officers for the purpose of section 4 of the Act shall be the officer commanding the army command, army corps, division, district, L. of C. Area, Brigade Area, L. of C. Sub-Area, Base Sub-Area or Beach Group with which the person subject to the Act under section 2, sub-section (1) clause (c) is for the time being serving.

**160. Conditions prescribed under section 7 (1) and (2) of the Act.**—In the Act and in these Rules the expression “British Officer” in relation to a person subject to the Act includes a person holding a commission in His Majesty’s Naval Forces or His Majesty’s Air Force and the expression ‘Indian Commissioned officer’ in relation to a person subject to the Act includes a person holding a commission in the Indian Air Force when the person subject to the Act is serving under any of the following conditions, namely :—

- (a) When he is a member of a body of His Majesty’s Military Forces acting with a body of His Majesty’s Naval Forces or His Majesty’s Air Force which is on active service.
- (b) When he is a member of a body of His Majesty’s Military Forces acting with a body of His Majesty’s Naval Forces or His Majesty’s Air Force under or within any Command whatsoever within which or in any area or place in which, by reason of regulations made by the Army Council and Air Council, or of orders made in pursuance of such regulations, section 184A of the Army Act or a portion thereof or section 184A of the Air Force Act or a portion thereof applies generally or in which both of those sections or portions of both of those sections apply generally.
- (c) When he is being conveyed on any vessel employed as a transport or troopship.
- (d) When he is serving in or is a patient in any hospital or medical unit in which any officer of His Majesty’s Naval Forces or His Majesty’s Air Force is on duty or is a patient.
- (e) When he is serving in any place in which, or with any body of His Majesty’s Military Forces with which, there is present any officer of his Majesty’s Air Force who is subject to military law.
- (f) When he is a member of a body of His Majesty’s Military Forces acting in an emergency with a body of His Majesty’s Naval Forces or His Majesty’s Air Force and an order in writing is made by the officers commanding the two bodies concerned stating that an emergency exists and that it is necessary for officers of His Majesty’s Naval Forces or His Majesty’s Air Force to exercise command over persons subject to the Act.

A copy of every Order made under this condition shall forthwith be sent to the Central Government.

- (g) When he is serving in any place in which, or with any body of His Majesty’s Military Forces with which, there is present any officer of His Majesty’s Naval Forces or His Majesty’s Air Force and the Central Government has by special order declared that it is necessary for officers of His



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Majesty's Naval Forces or His Majesty's Air Force to exercise command over persons subject to the Act in that place or with that body of military forces.

*Explanation.*—For the purposes of clauses (a), (c), (d), (f) and (g) of this rule, the expression “His Majesty's Air Force” includes the Indian Air Force.

**161. “Corps” prescribed under section 7(9) of the Act.**—(A) Each of the following separate bodies of persons subject to the Act shall be a “Corps” for the purposes of Chapter II and section 30(c) of the said Act and of Chapters II and III of these Rules :—

- (i) Each bodyguard.
- (ii) The Armoured Corps including Training Centres, Horsed Cavalry Regiments and non-combatants.
- (iii) \* \* \* \*
- (iv) The Royal Regiment of Indian Artillery.
- (v) The Royal Corps of Watchers.
- (vi) The Corps of Royal Indian Engineers, including non-combatants.
- (vi-a) The Defence of India Corps.
- (vii) The Road Construction Corps.
- (viii) The Corps of Indian Electrical and Mechanical Engineers.
- (ix) The Indian Army Ordnance Corps.
- (x) The Proof and Experimental Establishment, Balasore.
- (xi) \* \* \* \*
- (xii) The Corps of Indian Signals including non-combatants.
- (xiii) Each regiment or each ungrouped battalion (as the case may be) of Indian Infantry, or, in the case of Grouped Gorkha Regiments, each group of Indian Infantry including non-combatants.
- (xiii-a) Each Indian and Gorkha Parachute Battalion.
- (xiv) The Royal Indian Army Service Corps.
- (xiv-a) The Army in India Catering Corps.
- (xv) \* \* \* \*
- (xv-a) The Indian Army Medical Corps.
- (xv-b) The Indian Army Dental Corps.
- (xvi) The Indian Remount Veterinary and Farms Corps.
- (xvii) The Corps of British Cavalry, comprising the Indian personnel of British Cavalry units including non-combatants.
- (xviii) The Corps of British Infantry, comprising the Indian personnel of British Infantry units including non-combatants.
- (xviii-a) The Royal Armoured Corps, comprising the Indian personnel of the Royal Armoured Corps, including non-combatants.
- (xix) \* \* \* \*
- (xix-a) The Indian Observer Corps.
- (xx) The Indian Pioneer Corps.
- (xx-a) The Indian Canteen Corps.
- (xxi) The Labour Corps (Special List).
- (xxi-a) The Corps of Military Police (India).

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(xxi-aa) The Corps of Indian Army Physical Training Instructors.

(xxi-b) The Intelligence Corps (India).

(xxi-c) The Ministry of Defence Security Corps.

(xxi-d) The Frontier Defence Corps.

(xxii) Any other separate body of persons subject to the Act, employed on any service and not attached to any of the above corps or to any department.

(B) Every British or Indian unit in which a court-martial book is maintained shall be a "corps" for the purposes of section 126 of the Act and Rule 159.

(C) For the purposes of every other provisions of the Act and of these rules each of the following separate bodies shall be "corps":—

- (i) Every battalion.
- (ii) Every company which does not form part of a battalion.
- (iii) Every regiment of cavalry, armoured corps, or artillery.
- (iv) Every squadron or battery which does not form part of a regiment of cavalry, armoured corps, or artillery.
- (v) Every reserve centre, training centre, depot centre or regimental centre.
- (vi) Every other separate unit composed wholly or partly of persons subject to the Act.

1. The effect of this rule is that each of the bodies specified in para. (A) is a "corps" for the purposes of enrolment, attestation, dismissal and discharge, *i.e.*, for all purposes connected with a person's service in the Army. For all other purposes (except those of section 126) the bodies mentioned in para. (C) are "corps".

2. The effect of rule 7, read with the prescribed forms of enrolment, is that every person enrolled under the Act must be enrolled either in some corps, as defined in para. (A) of this rule, or in some department as defined in section 7 (II) of the Act.

3. A "group" in paras. (C) (iv) and (vi) means the batteries grouped together under an officer exercising a lieutenant-colonel's command.

"Depot" in clause (C) (xvi) does not include a sub-depot of a Supply Depot Company.

**162. Prescribed officers under section 14 of the Act.**—The prescribed officer for the purposes of section 14 of the Act shall, as regards Indian Military Medical pupils, be the Director-General, Indian Medical Service, and the Surgeon-General or the Inspector-General of Civil Hospitals of the province within which the School to which the medical pupil belongs is situated and as regards personnel of the Intelligence Corps (India) enrolled under the Act, whether attested or not, the Commandant, Intelligence Corps (India).

**163. Prescribed officers under section 19 of the Act.**—The authorities empowered to reduce a warrant officer or a non-commissioned officer to a lower grade or to the ranks shall, on active service, include the officer commanding the forces in the field.

**164. Prescribed officers under section 49A of the Act.**—The prescribed officer for the purposes of section 49A of the Act shall be the officer commanding the forces in the field, or, in the case of a sentence which he confirms or could have confirmed or which did not require confirmation, the officer commanding the army, army corps, division, brigade or any detached portion of His Majesty's Forces within which the trial was held.

**165. Prescribed authorities under section 52 of the Act.**—Any penal deduction from the pay and allowances of a person subject to the Act, made under Chapter VII thereof, may be remitted as hereinafter provided:—

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(A) Any penal deduction from the pay and allowances of any such person may be remitted by the Central Government.

(B) The commanding officer of any such person, other than an Indian Commissioned officer, who has been absent without leave for a period not exceeding five days may, unless the person is convicted by a court-martial on a charge for such absence, remit the forfeiture of pay and allowances to which that absence renders him liable.

(C) A forfeiture of pay and allowances incurred by any such person owing to his absence as a prisoner of war may (unless it shall have been proved before a court of enquiry that he was taken prisoner through his own wilful neglect of duty, or that he served with or under, or aided, the enemy, or that he did not as soon as possible, return to the service) be remitted by the Commander-in-Chief in India, by the officer commanding an army, army corps, division or independent brigade, or by the officer commanding the forces in the field.

**166. Prescribed authorities under section 52A of the Act.**—The prescribed authorities for the purposes of section 52A of the Act shall be :

**In the case of officers of the Indian Medical Service and the Indian Medical Department.**—The Director General, Indian Medical Service.

**In the case of civilian personnel of the Posts and Telegraphs Department who are subject to the Act.**—The Director General, Posts and Telegraphs.

**In all other cases.**—The officer not below the rank of Lieutenant-Colonel commanding a Training Battalion, Training Centre, Depot or Record Office who maintains the accounts of the individual, or any higher authority.

**166A. Prescribed authorities under section 52B of the Act.**—The prescribed authorities for the purposes of section 52B of the Act shall be

**In the case of officers of the Indian Medical Service including those seconded to the Indian Army Medical Corps and the Indian Medical Department.**—The Director-General, Indian Medical Service.

**In the case of officers of the Indian Army Medical Corps excluding officers seconded from the Indian Medical Service.**—The Director of Medical Services.

**In the case of civilian personnel of the Posts and Telegraphs Department who are subject to the Act.**—The Director-General of Posts and Telegraphs.

**In the case of all other Indian Commissioned officers.**—The Director of Pay and Pensions.

**In all other cases.**—The officer not below the rank of Lieutenant-Colonel Commanding a Training Battalion, Training Centre, Depot or Record Office who maintains the accounts of the individual or any higher authority.

**167. Prescribed authorities under sections 69 and 70 of the Act.**—The prescribed military authority for the purpose of sections 69 and 70 of the Act shall be the officer commanding the army, army corps, division, corps, brigade or station in which the accused person is serving:

Provided that, in cases falling under section 41 of the Act, in which death has resulted the prescribed military authority shall be the officer commanding the army, army corps, division corps or independent brigade in which the accused person is serving and no lower authority.

**168. Prescribed officer under section 102 of the Act.**—The prescribed officer for the purposes of section 102 of the Act shall, whenever any division or brigade is temporarily withdrawn from its territorial area, be the officer, not being below the rank of field officer, commanding the corresponding divisional or brigade area, within which the trial is held :

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Provided that, when the officer who held the trial is himself the commander of such area, he shall forward the proceedings to superior authority.

When the trial is held on board a ship the prescribed officer shall be the officer commanding the troops on board the ship, or the officer who would have had power to deal with the proceedings had the trial been held at the port of disembarkation :

Provided that, when the officer who held the trial is himself the officer commanding the troops on board the ship, he shall forward the proceedings to the authority at the port of disembarkation.

**169. Prescribed officers and manner of custody under section 103A of the Act.**—(1) The prescribed officer for the purposes of sub-section (1) of section 103A of the Act shall be :—

In the case of a trial by summary court-martial,

The authority empowered to deal with the proceeding of such a court under section 102 of the Act.

In the case of a trial by summary general Court Martial

The convening officer or any authority superior to him.

(2) The prescribed officer for the purposes of sub-section (5) of section 103A of the Act shall be the officer commanding the army, army corps, division or brigade within the area of whose command the accused is in custody or is detained, and, in the case of an accused who has been found by a summary general court-martial to be of unsound mind, shall include the officer who has power to convene a summary general court-martial for the trial of that accused; and, in the case of an accused who has been found by a summary court-martial to be of unsound mind and who is in the custody of or is detained under the charge of, the corps, department or detachment to which he belongs, shall include the commanding officer of that corps, department or detachment:

Provided that where an officer who proposes to act as a prescribed officer under sub-section (5) of section 103A of the Act is under the command of the officer who has taken action in the case under sub-section (3) of that section, he shall ordinarily obtain the approval of such officer before he acts; but, if he is of opinion that military exigencies, or the necessities of discipline, render it impossible or inexpedient to obtain such approval, he may act without obtaining such approval but shall report his action and the reasons therefor to such officer.

(3) For the purposes of sub-section (3) of section 103A of the Act the manner in which an accused person shall be kept in custody shall be as follows :—

The accused shall be confined in such manner as may, in the opinion of the proper military authority, be best calculated to keep him securely without unnecessary harshness, as he is not to be considered as a criminal but as a person labouring under a disease.

**170. Prescribed officer under section 112 of the Act.**—The prescribed officer for the purposes of section 112 of the Act shall be—

(a) As regards persons undergoing sentence in a civil prison or any other place.

The officer commanding the army, army corps, command, division, district, independent brigade or independent brigade area within the area of whose command the prisoner subject to such punishment may for the time be.

(b) As regards persons convicted on active service.

The officer commanding the force in the field.

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**171. Prescribed officer under section 91A of the Act.**—The prescribed officer for the purposes of sub-section (1) of section 91A of the Act shall be the officer commanding the corps, department or detachment to which the person appears to have belonged or alleges that he belongs or had belonged.

**172. Prescribed persons under sections 114, 115 and 116B to 116I of the Act.**—(A) The prescribed person for the purposes of sections 114 and 116B to 116I of the Act, shall be the Secretary to the Government of India in the Ministry of Defence.

(B) The prescribed person for the purposes of section 115 of the Act shall be the person referred to in sub-rule (A) and, so long as the commanding officer has under the Act the control of the property of the deceased person or lunatic or of the proceeds of the sale or conversion of such property, shall also include such commanding officer.

**173. Prescribed officers under sub-section (2) of section 107 of the Act.**—The prescribed officer, under sub-section (2) of section 107, for the purpose of directing whether the sentence shall be carried out by confinement in a civil prison or by confinement in a military prison, shall be, in the case of a sentence which has been confirmed, any higher authority than the confirming officer, and, in the case of a sentence which does not require confirmation, the convening officer or any higher authority, or any higher authority to the officer holding the trial.

**174. Prescribed manner for appointing a Committee of Adjustment under section 116B of the Act.**—(1) A Committee of Adjustment shall consist of three officers. When practicable, the president shall be a person not below the rank of Major.

(2) The Committee shall be appointed by following officers :—

- (a) if the deceased was serving with his unit, by the officer commanding the unit, not being below the rank of Lieutenant-Colonel; if he is below that rank, then by the station commander;
- (b) if the death occurred at sea, by the officer commanding the troops on board the ship;
- (c) in all other cases, except as provided in clause (b) of sub-rule (5), by the officer in immediate command.

(3) If the death occurs at sea, and a Committee cannot be assembled on board the ship, it will be assembled as soon as possible after the ship reaches its destination. If the port of disembarkation is a military station, the Committee will be assembled by the officer in immediate command; if it is not a military station, by the general officer in whose command the port is situated.

(4) If the officer authorised by sub-rules (2) or (3) to appoint a Committee is, from any reason, unable to do so, he will apply to superior authority.

(5) In cases where the deceased died while temporarily absent from the country in which he was stationed, then—

- (a) if the death occurred out of India, a local Committee of Adjustment may also be appointed by the officer in command of the unit or station from which the deceased was temporarily absent to deal with his affairs in that country; and



## INDIAN ARMY ACT RULES

- (b) if the death occurred in India, one Committee only shall be assembled, which shall be appointed by the officer who would have appointed the Committee had the deceased not been so temporarily absent.

**175. Prescribed manner for appointing a Standing Committee of Adjustment under section 116K of the Act.—**(1) The appointment of a Standing Committee of Adjustment shall, in the case of Indian Commissioned Officers who die or desert while on active service, be by order of the Commander-in-Chief, India, or of such officer as he may appoint in this behalf.

(2) The Standing Committee shall consist of three officers. Where practicable the president shall be a person not below the rank of a Major.

# **INDIAN ARMY ACT RULES**

## **APPENDICES**

## INDIAN ARMY ACT RULES

### FIRST APPENDIX

This Appendix consists of Enrolment Forms and is not reproduced. A list of forms is given below with the number and year of the Gazette of India, Army Department Notification in which each form was prescribed. The forms that appeared in Army Department Notification 911 of 1911 formed the original First Appendix.

Form No.	To whom applicable	Army Department Notification	Remarks
I. (I.A.F.K.-1162)	Combatants	No. 830 of 1926.	As amended by D.D. Notifications Nos. 824 of 1936, 350 of 1938, 2076 of 1941, 693 of 1942, 30 of 1943 and W.D. No'n. No. 41 of 1946.
II. (I.A.F.K.-1165)	All non combatants including followers.	No. 682 of 1932.	As amended by D.D. Notifications Nos. 824 of 1936, 2076 of 1941, 693 of 1942, 1803 of 1942, 30 of 1943, 440 of 1944, 1910 of 1944 and W.D. Notification No. 41 of 1946.

INDIAN ARMY ACT RULES

**SECOND APPENDIX**  
**FORMS OF CHARGES**

**PART I**

*Commencement of Charge Sheet*

The accused [*rank, name, corps*], an Indian commissioned officer, or

The accused [*number, rank, name, corps*], or

The accused [*name*] being a person subject to Indian Military Law [as an officer, as a warrant officer, as a non-commissioned officer] under the provisions of section 2 (1) (c) and section 3 (1)] of the Indian Army Act.

is charged with—

PART II.  
Statement of offence.  
OFFENCES IN RESPECT OF MILITARY SERVICE.  
SECTION 25.

- (a) Shamefully { abandoning a  
delivering up a { garrison  
fortress  
post  
guard { committed to his charge.  
which it was his duty to defend.
- (b) In presence of an enemy { shamefully casting away his  
intentionally using { words { ~~ambush~~ambushion.  
[other means] { to induce a person subject to  
to discourage a person subject { military law to abstain  
to military law { from acting against the enemy.  
misbehaving in such manner as to show cowardice.
- (c) (1) { Holding corresponding with { enemy.  
Communicating intelligence to { a person in arms against the State.
- (2) Coming to the knowledge of a { ~~communication~~ communication with { the enemy  
of intelligence to { a person in arms against the State } and omitting to discover it immediately to his commanding  
or other superior officer.
- (d) Treacherously making known the watchword to a person not entitled to receive it.
- (e) (1) { ~~Assisting~~ } with { money  
virtuals  
ammunition { an enemy.  
a person in arms against the State.
- (2) Knowingly { harbouring { an enemy.  
protecting { a person in arms against the State.
- (f) { In time of war  
During a military  
operation. } intentionally { action.  
camp.  
garrison.  
quarters.  
a false alarm  
in { spreading reports calculated to create { dependency.
- (g) When a sentry { In time of { war  
alarm  
State prisoner  
treasure  
magazine  
dockyard } sleeping upon his post.  
quitting his post { without being regularly relieved,  
without leave.



- (h) In time of action leaving his { commanding officer post party } to go in search of plunder.
- (i) In time of war quitting his { guard picquet party patrol } { without being regularly relieved, without leave. }
- (j) { In time of war During a military operation } { using criminal force to committing an assault on forcing a safeguard breaking into plundering injuring destroying } { a person bringing a house [other place] a field. a garden. [other property]. } { provisions necessities } { the } { carriers } { His Majesty's Forces } for plunder.
- (k) On active service committing an offence against the { property } { of an inhabitant of of a resident in } { the country in which he was serving. }
- SECTION 26.
- (a) { Striking Forcing Attempting to force } a sentry.
- (b) In time of peace intentionally occasioning a false alarm in { Camp. garrison. cantonment. }
- (c) { When a sentry When on guard } { plundering Wilfully destroying Wilfully injuring } { property placed under his charge. charge of his guard. }
- (d) When a sentry in time of peace { sleeping upon his post quitting his post } { without being regularly relieved, without leave. }

# MUTINY AND INSUBORDINATION.

## SECTION 27.

- (a) { Beginning Exciting Causing Conspiring with Joining in } { another person other persons } { to cause } a mutiny.
- (b) Being present at a mutiny and not using his utmost endeavours to suppress the same.
- (c) { Knowing Having reason to believe in } { the existence of } { a mutiny an intention of mutiny a conspiracy against the State } { failing to give information thereof without delay and his commanding or other superior officer. }

- (d) { Using  
Attempting to use  
Committing an assault on } criminal force to { his superior officer } { knowing  
having reason to believe } him to be such.
- (e) Disobeying the lawful command of his superior officer.

#### SECTION 28.

- (a) Being grossly { insubordinate  
insolent } to his superior officer in the execution of his office.
- (b) Refusing to { Superintend  
assist in } the making of a { work  
other military  
field work } ordered to be made { in quarters.  
in the field.
- (c) (1) Impeding { a provost-marshal.  
an assistant provost-marshal.  
an officer  
a non-commissioned officer  
a person } legally exercising authority { er  
on behalf of } a Provost-marshal.
- (2) Refusing when called on to assist in the execution of his duty { a provost-marshal.  
an assistant provost-marshal.  
an officer  
a non-commissioned officer  
a person } legally exercising authority { under  
on behalf of } a provost-marshal.

### DESERTION, FRAUDULENT ENROLMENT AND ABSENCE WITHOUT LEAVE.

#### SECTION 29.

- (1) Deserting the service.  
(2) Attempting to desert the service.

#### SECTION 30.

- (a) (1) Knowingly harbouring a deserter.
- (2) { Knowing  
Having reason to believe } that { a person has deserted  
a deserter has been harboured by  
another person } and { failing to give information thereof without  
delay to his own or some other superior  
officer.  
failing to use his utmost endeavour to  
cause such deserter to be apprehended.
- (b) { owing  
Having reason to believe } { a person to be a  
deserter and } { procuring  
attempting to procure } the enrolment of such person
- (c) Without having first obtained a regular discharge from his { department } { enrolling himself } { the same  
another } { corps.  
department.
- (d) (1) Absenting himself without leave.  
(2) Without sufficient cause overstaying leave granted to him.

- (e) Having received information from proper authority that the { corps portion of a crops department } to which he belongs has been ordered on active service and failing without sufficient cause to report from leave without delay.
- (f) Without sufficient cause failing to appear at the time fixed at the { parade place } appointed for { exercise.
- (g) Quitting { parade of march } without sufficient cause. without leave from his superior officer.
- (h) In time of peace quitting his { guard piquet patrol } without being regularly relieved. without leave.
- (i) Being found, without proper authority, two miles or upwards from camp.
- Absenting himself without proper authority from his { cantonment lines camp after retreat beating. } after tattoo.

DISGRACEFUL CONDUCT

SECTION 31.

- (a) Dishonestly { misappropriating converting to his own use } { money, provisions, forage, arms, clothing, ammunition, tools, instruments, equipments, military stores, } the property of the Crown entrusted to him.
- (b) Dishonestly { retaining } { money, provisions, forage, arms, clothing, ammunition, tools, instruments, equipments, military stores, } the property of the Crown { knowing having reason to believe } the same to have been { misappropriated converted to his own use } by a person to whom it was entrusted.
- (c) Wilfully { destroying } crown property entrusted to him.
- (d) Committing theft in respect of the property of { the Crown a military a person } { mess. band. institution. } { subject to military law. serving with the army. attached to }

(e) Dishonestly { receiving { knowing { it to be stolen, { The Crown { mess.  
retaining { having reason { the property { a military { band.  
 { to believe { of { a person { institution.

(f) Such an offence as is mentioned in clause (f) of section thirtyone of the Indian Army Act. } with intent to { defraud  
 { cause wrongful gain to a person  
 { cause wrongful loss to a person

(g) (1) Malingering.

(2) { Feigning { disability } in himself.  
 { Producing {

(3) Intentionally { delaying his cure.  
 { aggravating his { disease.  
 { infirmity.

(h) Voluntarily causing hurt to { himself } with intent to render { himself } unfit for service.  
 { a person } { his person }

(i) (1) Committing an offence of { a cruel  
 { an indecent } kind.  
 { an unnatural

(2) Attempting to commit { a cruel  
 { an indecent } kind and doing an act towards its commission.  
 { an unnatural

## INTOXICATION.

### SECTION 32.

Intoxication.

## OFFENCES IN RELATION TO PERSONS IN CUSTODY.

### SECTION 33.

Releasing without proper authority { a State prisoner  
 Negligently suffering to escape { an enemy  
 { a person taken in arms against the State } placed under his charge.

### SECTION 34.

(a) When in command of a { picket, } refusing to receive a {isoner } duly committed to his charge.  
 { patrol } { person }

(b) { Releasing without proper authority { a prisoner  
 { Negligently suffering to escape { a person } placed under his charge.

(c) When in military custody leaving such custody before being set a liberty by proper authority.

# OFFENCES IN RELATION TO PROPERTY

## SECTION 35.

(a)(1) Committing extortion

(2) Extacting without proper authority { portage,  
provisions } from a person.

(b) In time of peace,

{ committing house-breaking for the purpose of plundering.  
plundering  
destroying { field.  
damaging { a garden.  
[other property]

(c) Designedly  
Through neglect

{ Killing  
injuring  
making away with  
ill-treating  
losing } his horse.  
an animal used in the  
public service.

(d) { Making away with  
Being concerned in making  
away with; } his

{ arms.  
ammunition.  
equipments.  
instruments,  
tools.  
clothing.  
regimental necessities.

(e) Losing by neglect his

{ arms.  
ammunition.  
equipments.  
instruments.  
tools.  
clothing.  
regimental necessities.

(f) Wilfully injuring

{ his  
property belonging to

{ arms.  
ammunition.  
equipments.  
instruments.  
tools.  
clothing.  
regimental necessities.

{ the Crown.  
a military  
a person

{ band.  
institution.

{ subject to military law.  
serving with  
attached to } the army.

(g) { pawning  
Destroying  
Punishing  
Detaining } medal  
& decoration } granted to him



# OFFENCES IN RELATION TO FALSE DOCUMENTS AND STATEMENTS.

## SECTION 36.

- (a) Making a false accusation against a person subject to military law knowing such accusation to be false.
- (b) In making a complaint
- under section 117 of the Indian Army Act,
  - under section 117A of the Indian Army Act,
- knowingly making a false statement affecting the character of a person subject to military law.
- Knowingly and wilfully suppressing a material fact.
- (c) Obtaining Attempting to obtain
- for himself
  - for a person
- a pension
  - an allowance
  - an advantage
  - a privilege
- by a false statement which he
  - by making using a false entry in a book, record.
  - by making a document containing a false statement.
  - by omitting to make a true entry.
  - document containing a true statement.
- the number the state money arms ammunition clothing equipments stores (other property)
  - the men under his
  - in his charge belonging to
  - the Crown, a person in a person attached to
  - the army.
- (d) Knowingly furnishing a false
- Omitting
  - Refusing
- through design culpable neglect
  - to make
  - send
  - a return report
  - of
  - the men under his
  - in his charge belonging to
  - the Crown, a person in a person attached to
  - the army.

## SECTION 37.

Making a wilfully false answer to a question set forth in the prescribed form of enrolment which was put to him by the enrolling officer before whom he appeared for the purpose of being enrolled.

# OFFENCES IN RELATION TO COURTS-MARTIAL.

## SECTION 38.

- (a) When duly summoned to attend as a witness before a court-martial.
- intentionally omitting to attend.
  - refusing to
  - be sworn.
  - make affirmation.
  - answer a question.
  - produce deliver up
  - a book a document [other thing]
  - which he had been duly warned and called upon to
  - produce, deliver up.
- (b) (1) Intentionally
- offering an insult
  - causing an interruption disturbance
- to a court-martial whilst sitting.
- (2)
- Using a
  - Being
  - naming disrespectful
  - insulting
  - word sign gesture
- in the presence of a court-martial whilst sitting.
- (c) Having been duly
- sworn
  - affirmed
  - before
  - a court-martial
  - a military court competent to administer an oath or affirmation.
  - making a false statement which he
  - knew believed did.
  - to be true.
  - to be false.

## MISCELLANEOUS MILITARY OFFENCES.

## SECTION 39.

- (a) Behaving in a manner unbecoming the position and character of { an officer.  
a warrant officer.
- (b) { Striking } a person subject to the Indian Army Act being his sub- { rank.  
ill-treating } ordinate in { position.
- (c) When in command { at apost } receiving a complaint { beaten  
on the march } that a person under his command has { maltreated  
oppressed } a person,  
{ disturbed } a fair  
{ committed } a market,  
a riot,  
a trespass,  
and failing to have due reparation made to the injured person or to report the case to the proper authority.
- (d) By defiling a place of worship { intentionally } { insulting the religion  
wounding the religious feelings. } of a person.
- (e) Attempting to commit suicide and doing an act towards the commission of the same.
- (f) Being below the rank of warrant officer and carrying when off duty a { sword  
bludgeon } without proper authority { in  
about } camp,  
contonments.  
a town.  
a bazar.  
a town.  
a bazar.
- (g) { Accepting,  
Obtaining,  
Agreeing to  
accept,  
Attempting to obtain } { for himself  
[for any other person] } { a gratification as a } { motive } { for pro- } { the enrolment of a person,  
leave of  
absence  
promotion  
an advantage  
an indulgence. } for a person in the service.
- (h) Neglecting to obey { general  
garrison } orders.  
{ other }
- (i) { An act  
An omission. } prejudicial to good order and military discipline.

## ATTEMPTS NOT BEFORE PROVIDED FOR.

## SECTION 39-A.

- Attempting { to ..... (specify offence attempted)  
to cause ..... (Specify offence) to be committed. } and doing an act towards the commission of the same.

ABETMENT.

SECTION 40.

Abetment within the meaning of the Indian Penal Code of an offence punishable under the Indian Army Act

CIVIL OFFENCES.

SECTION 41.

- (1) Committing a civil offence, that is to say (*State the offence as described in the Indian Penal Code or other law in force in British India*).
- (2) When on active service.
- (3) In a place beyond British India in which the Central Government or the Crown Representative does not exercise jurisdiction by virtue of the Government of India Act, 1935 or of any Order in Council under the Foreign Jurisdiction Act, 1890.
- (4) In a Frontier Post specified by the Central Government by notification under section 41 of the Indian Army Act.
- committing the offence of
- Murder  
culpable homicide  
rape.
- against a person not subject to military law.

## INDIAN ARMY ACT RULES

## SECOND APPENDIX

## ILLUSTRATION OF CHARGE.

NOTE.—The following is an illustration of a complete charge-sheet, with statement of offence and particulars, as it would be placed before a district court-martial :—

*Charge-Sheet.*

The accused No. 240, Sepoy Ali Baksh,—the Punjab Regiment is charged with—

*Disobeying the lawful command of his superior officer,*

First Charge,  
Section 27 (c)

in that he,

at Allahabad, on the 28th January 1931, disobeyed the lawful command of his superior officer, Jemadar Futteh Khan of the same regiment, to turn out for Commanding Officer's parade, by not turning out.

*Being grossly insubordinate to his superior officer in the execution of his office,*

Second Charge,  
Section 28 (a)

in that he,

at Allahabad, on the 28th January 1931, when confined by Jemadar Futteh Khan of the same regiment, on the first charge, said to him "I am a better man than you and will not go to the guard-room by your order", or words to that effect.

A. B.,

Commanding—the Punjab Regiment.

Allahabad,

31st January 1931.

\*To be tried by a district court-martial.

X. Y.,

Commanding Allahabad Brigade  
(or Staff Officer, who should sign  
for Officer Commanding  
Allahabad Brigade).

Allahabad,

1st February 1931.

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\*When the sanction is accorded for the trial of grave offences by summary court-martial (I. A. A. section 74, proviso) a similar entry should be made on the charge-sheet.

## INDIAN ARMY ACT RULES

## NOTE AS TO USE OF FORMS OF CHARGES.

*This note does not form part of the Appendices to the Indian Army Act Rules.*

(1) Every charge-sheet will begin as shown in the form in Part I of the Second Appendix (forms of charges), which are given as examples.

The description of an Indian commissioned officer, Viceroy's commissioned officer, warrant officer or person enrolled under the Act by his rank and corps is a sufficient averment that he is an officer, warrant officer or such a person and that he is amenable to military law. In other cases, words must be added to show that the person is amenable to military law. (Sec Rule 19.)

(2) The commencement of the charge-sheet (according to the form in Part I) will be followed by the charge or charges.

(3) Each charge will consist of two parts : a statement of the offence and a statement of the particulars. [Rule 20(B).]

(4) The statement of the offence will be in one of the forms in Part II.

(5) Where two or more words or expressions occur in Part II of the Second Appendix bracketed together one under the other, the particular word, or expression, should be used which most accurately describes the offence which appears to the officer framing the charge to be capable of proof by legal evidence.

(6) Where the officer framing the charge is doubtful whether the offence so capable of being proved by legal evidence is more accurately described by one word, or expression, or by another, he may frame two or more alternative charges, each charge containing one of the words or expressions which appear to the officer to be applicable to the facts as capable of proof.

(7) Where two or more of the words or expressions bracketed together appear, when coupled together, with the word "and", accurately to describe the offence, the charge may couple together such words or expressions ; but in no case must the charge couple with the word "or" two or more of the words or expressions bracketed together. [See Rule 20 (A).]

(8) For example, a person may be charged with dishonestly misappropriating money, provisions, *and* forage, the property of Government entrusted to his charge : but a charge for dishonestly misappropriating money, provisions or forage will be a bad charge.

(9) In a few cases shown in italics bracketed thus [ ] words may be inserted in the charge which are not in the Act. In these cases, the Act contains a general expression such as "other place", "other property", "or otherwise", and the officer framing the charge must omit these words and insert a description of the place, property or means.

(10) The statement of the offence in each charge will be followed by the appropriate statement of the particulars, commencing with the words "in that he", etc., or "in having", etc., and stating in brief ordinary language what the accused is alleged to have done.



## INDIAN ARMY ACT RULES

(11) The words "in that he" will be followed by the verb in the past tense; the words "in having" will be followed by the past participle. The sentence stating the particulars will be framed more easily sometimes in the one form, sometimes in the other.

(12) In the case of several charges, the particulars in one charge may refer to the particulars in another [Rule 20 (E)], as, for example "in having done the acts alleged in the particulars to the first charge." or "in that, at the place and time aforesaid, he was deficient of the necessities abovementioned in the second charge, which it was his duty to have." If the accused is acquitted on any charge in which full particulars were set out, and is convicted on a charge which referred to those particulars, the particulars referred to must be treated as having been set out in full in the charge on which the accused is convicted, and must be set out in full in any record of conviction in which the particulars are set out.

(13) The statement of particulars should specify all the ingredients necessary to constitute the offence : for example if the charge is one for disobeying a lawful command, the "particulars" must state the command, and show that it was given by a superior officer, and also how the accused disobeyed the command.

(14) The "particulars" should always give a general description of the place where the offence was committed, such as the station or town, or "the line of march", and if it is material to the charge and is known, the exact place. The prepositions "near" or "between" may be used (for instance "at or near," "between") to assist in describing a place not exactly known, but they must never be used where the exact place is of the essence of the offence.

(15) The "particulars" should always state the date on which the offence was committed. If the exact date or time is unknown, the offence may be stated as having been committed "on or about" a particular day or time. This must never be done where the time is of the essence of the offence, as, for example, in the case of absence without leave, or being asleep on a post.

(16) In some cases the offence may be stated with the most accuracy as having been committed between two days or between two times ; as for instance, in the case of absence without leave, or of quitting a post. In other cases "between" may be used in consequence of the exact day or exact time not being known.

(17) The words "or near" and "or about" and "between" should never be used unless it is impossible to express the exact place or time, or the exact place or time is clearly unimportant, or unless the word "between" is the most accurate expression of the place or time.

(18) In many cases, as, for instance, where the defence is an *alibi*, the time and place may be of the utmost importance in proving that *alibi*, although it is not the essence of the offence.

(19) There must be added at the end of the "particulars" a statement of any expenses, loss or damage in respect of which the court-martial will be asked to award compensation under section 43 (h) of the Act. For example, there may be added to the "particulars" in the case of a charge under section 35 (b) that the accused thereby damaged property to the value of ; and other statements may be made according to the facts.

## INDIAN ARMY ACT RULES

(20) If, however, the expenses, loss or damage were caused by an act, or omission which constitutes another offence, separately specified in the Act, that act or omission should be charged as a separate offence; for example, if a man deserts and is deficient in his regimental necessaries, he should be charged in a separate charge for loss by neglect of his necessaries. It would not be proper to state it as a consequence of the desertion, or to award compensation for it upon a conviction for desertion only.

## SPECIMEN CHARGES.

*The following specimen charges (which are not, however, prescribed in any Rules) may be found useful.*

## No. 1.

## CHARGE-SHEET.

[Section 25 (b).]

The accused, No.                      , Sepoy                      ,                      Regiment, is charged with—

*In presence of an enemy shamefully casting away his arms,*  
in that he, at                      , on                      when on outlying picquet and  
attacked by the enemy, shamefully cast away his rifle, left his picquet,  
and ran away.

## No. 2.

## CHARGE-SHEET.

[Section 25 (b).]

The accused, No.                      , Sepoy                      ,                      Regiment, is charged with—

*In presence of an enemy misbehaving in such manner as to show cowardice,*

in that he, at                      , on                      , when one of the Barrack Guard of his Regiment, misbehaved in the presence of Sepoy                      , the Barrack Guard sentry who had mortally wounded one sepoy of the guard and seriously wounded another and was firing his rifle in all directions, by abandoning his guard and shamefully running away and hiding himself.

## No. 3.

## CHARGE-SHEET.

[Section 25 (f).]

The accused, No.                      , Sepoy                      ,                      Regiment, is charged with—

*In time of war intentionally occasioning a false alarm in camp,*  
in that he, at Camp                      , Field Force, on                      , by discharging his rifle, intentionally caused a false alarm in the said camp.

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## No. 4.

## CHARGE-SHEET.

[Section 25 (g).]

The accused, No. , Sepoy , Regiment, is charged with—

*When a sentry in time of alarm quitting his post without being regularly relieved,*

in that he, at , on after having been posted as sentry on No. Post Guard at 6 p. m., when Sepoy , the Barrack Guard sentry ran amok at 7 p.m. the same evening and was firing his rifle in all directions, quitted his post without being regularly relieved

## No. 5.

## CHARGE-SHEET.

[Section 25(g).]

The accused, No. , Sepoy , Regiment, is charged with—

*When a sentry over a magazine sleeping upon his post,*

in that he, at , on , between 1 and 2 p.m., when sentry on No. Post of the Magazine Guard, was asleep.

## No. 6.

## CHARGE-SHEET.

[Section 25 (i). ]

The accused, No. , Sepoy , Regiment, is charged with—

*In time of war quitting his picquet without leave,*

in that he, at . Field Force, on between 5 and 6 p.m., when on outlying picquet No. . quitted the said picquet without leave.

## No. 7.

## CHARGE-SHEET.

[Section 25 (j).]

The accused, , a of the Indian Telegraph Department, being a person subject to Indian Military Law as a non-commissioned officer under the provisions of section 2 (1) (c) and section 3 (1) of the Indian Army Act is charged with—

*In time of war using criminal force to a person bringing provisions to the camp of His Majesty's Forces.*

in that he, at , on , struck with his fist on the face A B who was bringing provisions to the camp of the Field Force.

## INDIAN ARMY ACT RULES

## No. 8.

## CHARGE-SHEET.

[Section 25 (k).]

The accused, No. . Sepoy , Regiment, is charged with—

*On active service committing an offence against the person of an inhabitant of the country in which he was serving,*

in that he, at , on , when on active service committed rape on of .

## No. 9.

## CHARGE-SHEET.

[Section 25 (j).]

The accused, No. . Sepoy , Regiment, is charged with—

*In time of war forcing a safeguard,*

in that he, at , on , in time of war, forced his way past Havildar into a shop in village in which by orders of the General Officer Commanding, the said Havildar..... had been placed as a safeguard, for the protection of the occupants and the property therein.

## No. 10.

## CHARGE-SHEET.

[Section 25 (j).]

The accused, No. . Sepoy , Regiment, is charged with—

*During a military operation breaking into a house for plunder,*

in that he, at , on , when forming part of a force engaged in military operations against dacoits, broke into the house of in search of plunder.

## No. 11.

## CHARGE-SHEET.

[Section 26 (a).]

The accused, No. . Sepoy , Regiment is charged with—

*Forcing a sentry.*

in that he, at , on , after being warned by the sentry on No. Post Guard not to pass, passed the said sentry.

## INDIAN ARMY ACT RULES

## No. 12.

## CHARGE-SHEET.

## [Section 26 (c).]

The accused, No. . Sepoy . Regiment, is charged with—

*When on guard, plundering property placed under charge of his guard, in that he, at , on , when on guard over the canteen of the Regiment, plundered drams of rum value or thereabout, from a cask of rum which had been placed under the charge of his guard.*

## No. 13.

## CHARGE-SHEET.

## [Section 26 (d).]

The accused, No. . Sepoy , Regiment, is charged with—

*When a sentry in time of peace, sleeping upon his post, in that he, at , on , between 1 and 2 a.m. when sentry on No. Post Guard, was asleep.*

## No. 14.

## (Joint trial.)

## CHARGE-SHEET.

## [Section 27 (a).]

The accused persons, No. . Havildar Regiment and No. . Sepoy , Regiment (etc.), are charged with—

*Joining in a mutiny.*

*in that they together, at , on , in Company with a number of other sepoy of the Company, Regiment, in a mutinous spirit marched to the orderly room of the said regiment with the object of making a combined representation on a matter of supposed grievance to their commanding officer, and then and there, they, with the exception of Havildar , on seeing the said Havildar marched out of the orderly room in custody, insubordinately took off their belts and threw them on the ground.*

## No. 15.

## (Joint trial.)

## CHARGE-SHEET.

## [Section 27 (a).]

The accused persons, No. , Naik , No. Sepoy (Lance-Naik) , and No. , Sepoy , all of the Regiment, are charged with—

*Conspiring with other persons to cause a mutiny,*

*in that they, at , on , agreed together and with Sepoy Regiment (and certain other persons unknown) to cause a mutiny in Company Regiment, to wit, to cause the said Company to refuse to march on the to to which place the said Company was under orders to march.*



## INDIAN ARMY ACT RULES

No. 16.

## CHARGE-SHEET.

[Section 27 (c).]

The accused, No. , Sepoy , Regiment, is charged with—

*Knowing the existence of an intention to mutiny and failing to give information thereof without delay to his commanding or other superior officer.*

in that he, at , on , having been present when Naik , Driver , and other soldiers of the Battery in his hearing, agreed to cut up and destroy the harness belonging to the said battery, failed to give information thereof to his commanding or other superior officer.

No. 17.

## CHARGE-SHEET.

[Section 27 (d).]

The accused, No. , Sepoy , Regiment, is charged with—

*Using criminal force to his superior officer knowing him to be such,*  
in that he, at , on , struck with his fist on the head Havildar of the same regiment.

No. 18.

## CHARGE-SHEET.

[Section 27 (d).]

The accused, No. , Sepoy , Regiment, is charged with—

*Attempting to use criminal force to his superior officer knowing him to be such,*

in that he, at , on , threw a stone at Havildar of the same regiment which missed the said Havildar.

No. 19.

## CHARGE-SHEET.

[Section 27 (d).]

The accused, No. , Sepoy , Regiment, is charged with—

*Committing an assault on his superior officer having reason to believe him to be such.*

in that he, at , on , when ordered by Havildar , Regiment, to leave the lines of the said Regiment, picked up a stone and threatened to throw it at the said Havildar whom he had reason to believe was his superior officer.

## INDIAN ARMY ACT RULES

## No. 20.

## CHARGE-SHEET.

[Section 27 (e).]

The accused, No. , Sepoy , Regiment, is charged with—

*Disobeying the lawful command of his superior officer,*  
in that he, at , on , when ordered by Naik  
of the same regiment to fall in for fatigue, did not do so.

## No. 21.

## CHARGE-SHEET.

[Section 28 (a).]

The accused, No. , Sepoy , Regiment, is charged with—

*Being grossly insubordinate to his superior officer in the execution of his office,*

in that he, at , on , said to Havildar of  
the same regiment, who had ordered him to be confined, "I am as good  
a man as you and will fight you any day you like," or words to that  
effect.

## No. 22.

## CHARGE-SHEET.

[Section 27 (d).]

The accused, No. , Sepoy , Regiment, is charged with—

*Refusing when called on, to assist in the execution of his duty a Provost Marshal,*

in that he, at , on when called on by Captain  
Provost-Marshal of the Field Force, to assist him  
in arresting an offender, refused to do so.

## INDIAN ARMY ACT RULES

## No. 23.

## CHARGE-SHEET.

[First charge, Section 29.]

The accused, No. . Sepoy . Regiment, is charged with---

*Deserting the service,*

in that he, at . on . absented himself from the Regiment, until apprehended by the Frontier Constabulary, at . on .

[Second charge, Section 31(d).]

*Committing theft in respect of the property of the Crown,*

in that he, when absenting himself from his regiment at the place and date aforesaid, committed theft by dishonestly taking with him one rifle value . and twenty rounds of ball ammunition value . the property of the Crown.

NOTE 1.—As a rule, proof of the date and circumstances in which the period of absence terminated is necessary to enable the court to decide whether the absence constituted desertion or merely absence without leave. Occasionally, however, these facts are not material, and proof of them cannot be obtained without inconvenience to the public service and great delay. In such cases they need not be proved, and should, therefore, not be averred in the particulars of the charge. See Charge Sheet No. 25 below.

NOTE 2.—It is immaterial whether the rifle is the soldier's own or a comrade's. See Indian Penal Code section 27, and illustration (d) to section 378.

## No. 24.

## CHARGE-SHEET.

[First charge, Section 29.]

The accused, No. . Sepoy . Regiment, is charged with—

*Deserting the service,*

in that he, at . on . absented himself from the Regiment, until apprehended by the civil power at . on .

[Second charge, Section 35(e).]

*Losing by neglect his clothing and regimental necessaries,*

in that he, at . On . was deficient of one greatcoat (value .), one flannel shirt, and one towel

NOTE.—See note 1 to charge-sheet No. 23.

## INDIAN ARMY ACT RULES

## No. 25.

## CHARGE-SHEET.

[Section 29.]

The accused, No. \_\_\_\_\_, Sepoy \_\_\_\_\_, \_\_\_\_\_ Regiment, is charged with

*Deserting the service,*

in that he, at \_\_\_\_\_, on \_\_\_\_\_, deserted from the \_\_\_\_\_ Regiment.

NOTE.—This form may be used when the date and circumstances of the termination of the absence are not material facts, and proof of them cannot be obtained without an unreasonable amount of delay or expense. See Note 1 to Charge Sheet No. 23.

## No. 26.

## CHARGE-SHEET.

[Section 29.]

The accused, No. \_\_\_\_\_, Sepoy \_\_\_\_\_, \_\_\_\_\_ Regiment, is charged with—

*Deserting the service,*

in that he, at \_\_\_\_\_, on \_\_\_\_\_, when under orders for embarkation for foreign service absented himself from \_\_\_\_\_ to \_\_\_\_\_ with intent to avoid such embarkation.

## No. 27.

## CHARGE-SHEET.

[Section 29.]

The accused, No. \_\_\_\_\_, Sepoy \_\_\_\_\_, \_\_\_\_\_ Regiment, is charged with—

*Deserting the service.*

in that he, at \_\_\_\_\_, on \_\_\_\_\_, having been placed under orders for active service and having been granted leave of absence from \_\_\_\_\_ to \_\_\_\_\_ to proceed to \_\_\_\_\_, did not rejoin at \_\_\_\_\_ on the expiry of the said leave but absented himself with intent to avoid such active service.

NOTE.—It will often be advisable to frame an alternative charge for “without sufficient cause overstaying leave granted to him” see charge-sheet No. 33. With respect to a case in which the accused has been apprehended by the civil police. See note 1 to charge-sheet No. 23.

## No. 28.

## CHARGE-SHEET.

[Section 29.]

The accused, No. \_\_\_\_\_, Sepoy \_\_\_\_\_, \_\_\_\_\_ Regiment, is charged with—

*Attempting to desert the service,*

in that he, at \_\_\_\_\_, on \_\_\_\_\_, attempting to desert the service by attempting to quit the lines of the \_\_\_\_\_ Regiment disguised as a woman, with the intention of deserting from the said regiment.

## INDIAN ARMY ACT RULES

## No. 29.

## CHARGE-SHEET.

[Section 30 (a).]

The accused, No. , Sepoy , Regiment, is charged with—

*Knowingly harbouring a deserter,*  
in that he, at , on , concealed in his house  
Sepoy , Regiment, whom he knew to be a deserter  
from the said regiment.

## No. 30.

## CHARGE-SHEET.

[Section 30 (b).]

The accused, No. , Sepoy , Regiment, is charged with —

*Knowing a person to be a deserter and attempting to procure the enrolment of such person,*

in that he, at , on , when employed on recruiting  
duty, brought before Major A. B., an Enrolling Officer, one C. D. whom  
he knew to be a deserter from the Regiment and attempted  
to procure the enrolment of the said C. D. into the Regiment.

## No. 31.

## CHARGE-SHEET.

[Section 30 (c).]

The accused, No. , Sepoy , Regiment, is charged with—

*Without having first obtained a regular discharge from his corps enrolling himself in another corps.*  
in that he, at , on , without having first obtained a  
regular discharge from the Regiment, enrolled himself in  
the Regiment.

## No. 32

## CHARGE-SHEET.

[Section 30 (d).]

The accused, No. , Sepoy , Regiment, is charged with—

*Absenting himself without leave,*  
in that he, at , absented himself without leave from tattoo roll  
call on till 7-30 A.M. on

## No. 33.

## CHARGE-SHEET.

[Section 30 (d).]

The accused, No. , Sepoy , Regiment, is charged with—

*Without sufficient cause overstaying leave granted to him,*  
in that he, having granted leave to absence from to to  
proceed to , failed, without sufficient cause, to rejoin at on  
the expiry of the said leave.



## INDIAN ARMY ACT RULES

No. 34.

CHARGE-SHEET.

[Section 30 (e).]

The accused, No. , Naik , Royal Indian Army Service Corps, is charged with—

*Having received information from proper authority that the corps to which he belongs has been ordered on active service and failing without sufficient cause to rejoin from leave without delay,*

in that he, on , while on leave of absence at , having received information from that the Regiment had been ordered on active service, failed, without sufficient cause, to rejoin the said regiment without delay.

No. 35.

CHARGE-SHEET.

[Section 30 (f).]

The accused, No. , Sepoy , Regiment, is charged with—

*Without sufficient cause failing to appear, at the time fixed, at the place appointed for duty,*

in that he, at on , failed without sufficient cause to appear at A.M. at , the place appointed for Commanding Officer's parade.

No. 36.

CHARGE-SHEET.

[Section 30 (g).]

The accused, No. , Sepoy , Regiment, is charged with—

*Quitting the line of march without leave from his superior officer*

in that he, at , on , when on the line of march from to , fell out without leave from the officer commanding his company.

No. 37.

CHARGE-SHEET.

[Section 30 (h).]

The accused, No. , Sepoy , Regiment, is charged with—

*In time of peace, quitting his guard without leave,*

in that he, at , on , when on regimental quarter-guard duty quitted the said guard without leave.

No. 38.

CHARGE-SHEET.

[Section 30 (i).]

The accused, No. , Sepoy , Regiment, is charged with—

*Being found without proper authority two miles or upwards from camp,*

in that he, when his Regiment was encamped at , on was found at , a place two miles or upwards from camp, without proper authority for being at the said place.

## INDIAN ARMY ACT RULES

No. 39.  
CHARGE-SHEET.  
[Section 30 (j).]

The accused, No. , Sepoy , Regiment, is charged with—

*Absenting himself without proper authority from his lines after tattoo,*  
in that he, at , on , absented himself without proper authority from his lines from P.M. to P.M.

No. 40.  
CHARGE-SHEET  
[Section 31 (a).]

The accused, No. , Naik , Royal Indian Army Service Corps, is charged with—

*Dishonestly misappropriating money, the property of the Crown, entrusted to him,*  
in that he, when on the march from to , between the and , dishonestly misappropriated Rupees out of a sum of Rupees , the property of the Crown, entrusted to him for the daily purchase of bhoosa for feeding camels in his charge.

No. 41.  
CHARGE-SHEET  
[Section 31 (a).]

The accused, , Subedar (Sub-Assistant Surgeon) , Indian Medical Department, is charged with—

*Dishonestly misappropriating military stores, the property of the Crown entrusted to him,*  
in that he, at , between and , dishonestly misappropriated the undermentioned military stores, the property of the Crown, of which he was in charge as Sub-Assistant Surgeon in Sub-Medical charge of No. Field Ambulance, viz.:—  
value  
value  
value

No. 42.  
CHARGE-SHEET.  
[First charge, Section 31 (a).]

The accused, No. , Havildar , Regiment, is charged with—

*Dishonestly misappropriating ammunition, the property of the Crown, entrusted to him,*  
in that he, at , on , dishonestly misappropriated twenty rounds of ball ammunition, the property of the Crown, value , which had been entrusted to his charge for the target practice of the casualties of Company, Regiment.

[Second charge, Section 39 (i). (Alternative).]

*An act prejudicial to good order and military discipline,*  
in that he, at , on , through neglect lost twenty rounds of ball ammunition, the property of the Crown, value , which had been entrusted to him for the target practice of the casualties of Company, Regiment.

## INDIAN ARMY ACT RULES

## No. 43.

## CHARGE-SHEET.

[Section 31 (b).]

The accused, Jemadar , Regiment, is charged with—  
*the same to have been dishonestly misappropriated by a person to whom they were entrusted,*

in that he, at , on , dishonestly received from Company Quartermaster-Havildar six pieces of flannelette, value , the property of the Crown, which he knew to have been dishonestly misappropriated by the said Company Quartermaster-Havildar to whom they, were entrusted.

## No. 44.

## CHARGE-SHEET.

[Section 31 (c).]

The accused, No. , Sepoy , Regiment, is charged with—

*Wilfully destroying the Crown property entrusted to him,*  
 in that he, at , on , wilfully destroyed by breaking it up one heliograph, value , the property of the Crown, which had been entrusted to him for his use as a regimental signaller.

## No. 45.

## CHARGE-SHEET.

[First charge, Section 31 (d).]

The accused, No. , Sepoy , Regiment, is charged with—

*Committing theft in respect of the property of a person subject to military law,*

in that he, at , on , committed theft in respect of a watch, the property of No. (name), , a sepoy in the same regiment.

[Second charge, section 31 (e). (Alternative).]

*Dishonestly receiving, knowing it to be stolen, the property of a person subject to military law,*

in that he, at the place and on the day aforesaid, was in possession of a watch stolen from the said which he knew to have been stolen.

## No. 46.

## CHARGE-SHEET.

[Section 31 (d).]

The accused, No. , Sepoy , Regiment, is charged with—

*Committing theft in respect of the property of the Crown.*

in that he, at , on , committed theft in respect of one M. L. E. Rifle, value , the property of the Crown.

## INDIAN ARMY ACT RULES

## No. 47.

## CHARGE-SHEET.

[First charge, Section 31 (e).]

The accused, No. , Sepoy , Regiment, is charged with—

*Dishonestly retaining, knowing it to be stolen the property of the Crown.* in that he, at , on , was in unlawful possession of twenty fired rifle cartridge-cases, the property of the Crown, which he knew to have been stolen.

[Second charge, Section 39(i). (Alternative).]

*An act prejudicial to good order and military discipline,* in that he, at , on , was in unauthorised possession of twenty fired rifle cartridge-cases, the property of the Crown.

## No. 48.

## CHARGE-SHEET.

[Section 31 (f).]

The accused, No. , Havildar , Regiment, is charged with—

*Such an offence as is mentioned in clause (f) of section thirty-one of the Indian Army Act, with intent to defraud,*

in that he, at , on , having received from Lieutenant A, Regiment, a cheque for Rupees payable to the Mess President, Regiment, irregularly cashed the same at the Regimental Treasure Chest, Regiment, and fraudulently misappropriated the proceeds, namely, Rupees

## No. 49.

## CHARGE-SHEET.

[Section 31 (f).]

The accused, No. , Sepoy (Clerk) , Regiment, is charged with—

*Such an offence as is mentioned in clause (f) of section thirty-one of the Indian Army Act, with intent to defraud,*

in that he, at , on , with intent to defraud, forged the name of Captain , to a post office order for Rupees thirty, and thereby obtained the sum of Rupees thirty.

## No. 50.

## CHARGE-SHEET.

[Section 31 (f).]

The accused, No. , Sepoy , Regiment, is charged with—

*Such an offence as is mentioned in clause (f) of section thirty-one of the Indian Army Act, with intent to defraud,*

in that he, at , on , with intent to defraud, obtained from , a shopkeeper, three tins of Gold Flake cigarettes, value , by falsely pretending that he, the accused, was an orderly to Captain , Regiment, and that he, the accused, had sent by the said Captain for the said cigarettes.

## INDIAN ARMY ACT RULES

No. 51.

## CHARGE-SHEET.

[Section 31 (f).]

The accused, No. , Sepoy (Lance-Naik)  
Regiment, is charged with—

*Such an offence as is mentioned in clause (f) of section thirty-one of the Indian Army Act, with intent to cause wrongful loss to a person.*

in that he, at , on , having received from No. Sepoy , of the same Regiment, the sum of Rupees ten (Rs. 10) for the purpose of despatching a money order, did not despatch the money order, but with intent to cause wrongful loss to the said Sepoy , converted the Rupees ten to his own use.

No. 52.

## CHARGE-SHEET.

[Section 31 (f).]

The accused, No. Havildar , Regiment, is charged with—

*Such an offence as is mentioned in clause (f) of section thirty-one of the Indian Army Act, with intent to cause wrongful loss to a person.*

in that he, at , on , with intent to cause wrongful loss to Sepoy , debited the said Sepoy in the acquittance roll for of Company, Regiment, with a deduction of Rupees , on account of clothing, which deduction he did not credit to the said sepoy's clothing account.

No. 53.

## CHARGE-SHEET.

[Section 31 (g).]

charged with—

The accused, No. , Sepoy , Regiment, is charged with—  
*Malingering.*

in that he, at , on (between and ) with the intention of evading his duties as a soldier counterfeited dumbness.

No. 54.

## CHARGE-SHEET.

[Section 31 (g).]

The accused, No. , Sepoy , Regiment, is charged with—

*Feigning disease in himself.*

in that he, at , on , pretended to Captain Indian Medical Service, that he was suffering violent pains in the head and down his back, whereas he was not so suffering.



## INDIAN ARMY ACT RULES

No. 55.

## CHARGE-SHEET

[Section 31 (g).]

The accused, No. , Sepoy , Regiment, is charged with—

*Intentionally delaying his cure,*

in that he, at , on , when under medical treatment for a wound in his leg, removed the bandages from the said wound with intent thereby to delay his cure and did thereby delay his cure.

No. 56.

## CHARGE-SHEET.

[Section 31 (h).]

The accused, No. , Sepoy , Regiment, is charged with—

*Voluntarily causing hurt to a person with intent to render that person unfit for service,*

in that he, at , on , at the request of Sepoy , cut off the trigger finger of the said sepoy with intent to render him unfit for service.

No. 57.

## CHARGE-SHEET.

[First charge, Section 31 (i).]

The accused, No. , Sepoy , Regiment, is charged with—

*Committing an offence of an unnatural kind,*

in that he, at , on , committed an unnatural offence on the person of , a sepoy in the same regiment.

[Second charge, Section 31 (i). (Alternative).]

*Attempting to commit an offence of an unnatural kind and doing an act towards its commission.*

in that he, at , on , attempted to commit an unnatural offence on the person of , a sepoy in the same regiment, and did an act towards its commission, that is to say (*describe the act*).

No. 58.

## CHARGE-SHEET

[Section 32.]

The accused, No. , Sepoy , Regiment is charged with—

*Intoxication,*

in that he, at , on , when on duty (*specify duty*) or having been previously warned for duty (*specify duty*), was intoxicated.

## INDIAN ARMY ACT RULES

## No. 59.

## CHARGE-SHEET.

## [Section 33.]

The accused, No. , Sepoy . Regiment, is charged with—

*Negligently suffering to escape a person taken in arms against the State, placed under his charge,*

in that he, at , on , when posted as sentry over A  
B , a person taken in arms against the State, negligently suffered the said A B to escape.

## No. 60.

## CHARGE-SHEET.

## [Section 34 (a).]

The accused, No. , Havildar . Regiment, is charged with—

*When in command of a guard refusing to receive a person duly committed to his charge,*

in that he, at , on , when in command of the quarter guard of the Regiment, refused to receive Sepoy , who had been ordered into confinement by Jemadar and duly committed to his charge.

## No. 61.

## CHARGE-SHEET.

## [Section 34 (b).]

The accused, No. , Havildar , Regiment, is charged with—

*Releasing without proper authority a person placed under his charge,*

in that he, at , on , when in command of the quarter guard of the Regiment, without authority released Sepoy , who was confined in the said quarter guard.

## No. 62.

## CHARGE-SHEET.

## [Section 34 (c).]

The accused, Subedar . Regiment, is charged with—

*When in military custody leaving such custody before being set at liberty by proper authority,*

in that he, at , on , when under close arrest in his quarters, went to the Bazaar.

## INDIAN ARMY ACT RULES

No. 63.

## CHARGE-SHEET.

[Section 35 (a).]

The accused, No. , Naik , Regiment, is charged with—

*Committing extortion,*

in that he, at , on , by threatening to make a false report to the officer commanding their company to the effect that Sepoys and had committed an unnatural offence together, extorted Rupees from each of the said sepoy.

No. 64.

## CHARGE-SHEET

[Section 35 (b).]

The accused, No. , Sepoy , Regiment, is charged with—

*In time of peace committing house breaking for the purpose of plundering*

in that he, at , on , broke into the house of for the purpose of plundering.

No. 65.

## CHARGE-SHEET.

[Section 35 (c).]

The accused, No. , Driver , No. A. T. C. (Mule), Royal Indian Army Service Corps, is charged with—

*Designedly ill-treating an animal used in the public service,*

in that he, at , between the and , designedly ill-treated mule No. by placing a stone under its saddle, thereby causing a sore back.

No. 66.

## CHARGE-SHEET.

[Section 35 (d).]

The accused, No. , Sepoy , Regiment, is charged with—

*Making away with his clothing,*

in that he, at , on , sold his greatcoat (value ) to for three rupees.

No. 67.

## CHARGE-SHEET.

[Section 35 (e).]

The accused, No. , Sepoy , Regiment, is charged with—

*Losing by neglect his clothing and regimental necessities,*

in that he, at , on , was deficient of one drill frock, one durrie, and one brass brush.

## INDIAN ARMY ACT RULES

## No. 68.

## CHARGE-SHEET.

## [Section 36 (a).]

The accused, No. . Sepoy . Regiment, is charged with—

*Making a false accusation against a person subject to military law knowing such accusation to be false,*

in that he, at . on . when appearing before Colonel A B . commanding the . Regiment, to answer for an offence, used language to the following effect, that is to say, "Major C, the company commander, takes no interest in his work and is entirely in the hands of the platoon commanders who in their turn take bribes all round and allow no one, without a bribe, to approach the Major Sahib" well knowing the said statement to be false.

## No. 69.

## CHARGE-SHEET.

## [Section 36 (c).]

The accused, No. . Sepoy . Regiment, is charged with—

*Attempting to obtain for a person a pension by a false statement which he knew to be false,*

in that he, at . on . when examined by Major A B . Regiment, who was investigating a claim to family pension preferred by C . inhabitant of . stated that he knew the said C to be father of late Sepoy D . Regiment well knowing such statement to be false.

## No. 70.

## CHARGE-SHEET

## [Section 36 (d).]

The accused, No. . Havildar (Quartermaster-Havildar) . Regiment, is charged with—

*Knowingly furnishing a false return of clothing in his charge belonging to a person in the army,*

in that he, at . on . in a return of clothing in his charge belonging to Lieutenant-Colonel A B . commanding the . Regiment, furnished by him to Lieutenant C D . Quartermaster of the said Regiment, showed 154 pairs of white drill shorts, value rupees . or thereabouts, as in store on (date), which statement was, as he well knew false.

NOTE.—Regimental property is technically the property of the Commanding Officer and should be so described.

## INDIAN ARMY ACT RULES

## No. 71.

CHARGE-SHEET.  
[Section 37.]

The accused, No. , Sepoy , Regiment, is charged with—

*Making a wilfully false answer to a question set forth in the prescribed form of enrolment which was put to him by the enrolling officer before whom he appeared for the purpose of being enrolled,*

in that he, at , on , when he appeared before Major A B , an Enrolling Officer, for the purpose of being enrolled for service in the Regiment, to the question put to him, "Have you ever served in His Majesty's Forces?" answered "No" whereas he had served, as he well knew, in the Regiment.

## No. 72.

CHARGE-SHEET.  
[Section 38 (b).]

The accused, No. , Sepoy , Regiment, is charged with—

*Intentionally offering an insult to a court-martial whilst sitting,* in that he, at , on , when being tried by general court-martial, said in a loud tone "It is no use my making any defence, the court have been told by the General to convict me and of course they will" or words to that effect.

## No. 73.

CHARGE-SHEET.  
[Section 38 (c).]

The accused, No. , Sepoy , Regiment, is charged with—

*Having been duly affirmed before a court-martial, making a false statement which he knew to be false,*

in that he, at , on , when examined as a witness before a court-martial, stated on solemn affirmation that Sepoy , Regiment, the person charged before the said court, was in his, the witness's, company in the lines at , between 4 and 5 P.M. on , which statement was, as he well knew, false.

## No. 74.

CHARGE-SHEET.  
[Section 39 (a).]

The accused, Lieutenant , Regiment, an Indian commissioned officer, is charged with—

*Behaving in a manner unbecoming the position and character of an officer,*

in that he, at , on , in payment of his mess account, gave to Major , the mess president, a cheque for Rupees one hundred (Rs. 100) on the Imperial Bank of India (Branch), which was dishonoured when presented, well knowing that he had not sufficient funds in the said Branch to meet the said cheque, and having no reasonable grounds for supposing that the said cheque would be honoured when presented.



## INDIAN ARMY ACT RULES

## No. 75

## CHARGE-SHEET.

## [Section 39 (a).]

The accused, Subedar , Regiment, is charged with—

*Behaving in a manner unbecoming the position and character of an officer,*

in that he, at , on , when orderly officer of the day, when it was reported to him that Sepoy A B had armed himself with a rifle and ammunition, and run amok defying any one to arrest him, did not go to the spot, nor take any prompt or adequate measures to capture, disarm or shoot down, or cause to be captured, disarmed or shot down the said A B either on receiving the report, or even subsequently when he became aware that the aforesaid A B had fired at and wounded Lieutenant C D of the same regiment.

## No. 76.

## CHARGE-SHEET.

## [Section 39 (b).]

The accused, No. . Sepoy , Regiment, is charged with—

*Striking a person subject to the Indian Army Act being his subordinate in rank,*

in that he, at , on , when drilling a squad of recruits, struck Sepoy of the same Regiment on the shoulder with a paccstick.

## No. 77.

## CHARGE-SHEET

## [Section 39 (e).]

The accused, Jemadar (Sub-Assistant Surgeon) , Indian Medical Department, is charged with—

*Attempting to commit suicide and doing an act towards the commission of the same,*

in that he, at , on , attempted to commit suicide by taking strychnine.

## No. 78.

## CHARGE-SHEET.

## [Section 39 (g).]

The accused, Warrant Officer, Class I (Sub-Assistant Surgeon) Indian Medical Department, is charged with—

*Accepting for himself a gratification as a motive for procuring leave of absence for a person in the service,*

in that he, at , on , accepted the sum of Rupees from Sepoy , Regiment, as a motive for procuring leave of absence for the said sepoy on medical grounds.

## INDIAN ARMY ACT RULES

No. 79.

## CHARGE-SHEET.

[Section 39 (h).]

The accused, No. , Havildar , Regiment, is charged with—

*Neglecting to obey Regimental orders,*

in that he, at , on , neglected to obey Regimental Order No. , dated , which requires the non-commissioned officer in charge of ammunition to return all fired cases to the magazine immediately on his return from the Range, by failing to return the fired cases of the casualties of Company until four hours or thereabouts after his return.

No. 80.

## CHARGE-SHEET

[First charge, Section 39 (i).]

The accused, No. , Jemadar , Regiment, is charged with—

*An act prejudicial to good order and military discipline,*

in that he, at , on , when Superintendent at the butts during the repetition of Musketry practice No. , by certain casualties of his regiment, wilfully caused it to be signalled to the firing point that four fair hits had been made on No. 3 target, whereas actually only one fair hit and one ricochet had been made on the said target, as he well knew.

[Second charge, Section 39 (i). (Alternative.)]

*An omission prejudicial to good order and military discipline,*

in that he, at , on , when Superintendent at the butts on the occasion mentioned in the first charge, omitted to exercise proper care in checking the targets, and thereby caused it to be signalled to the firing point that four fair hits had been made on No. 3 target, whereas actually only one fair hit and one ricochet had been made on the said target.

No. 81.

## CHARGE-SHEET

[Section 39 (i).]

The accused, No. , Havildar , Regiment, is charged with—

*An act prejudicial to good order and military discipline,*

in that he, at , on or about , improperly wrote and sent to his commanding officer, Lieut.-Colonel , Regiment, an anonymous letter in which he made use of the following words:—  
(set out)

## INDIAN ARMY ACT RULES

No. 82.

CHARGE-SHEET.

[Section 39 (i).]

The accused, No. , Sepoy , Regiment, is charged with—

*An act prejudicial to good order and military discipline,*  
in that he, at , on , was improperly in possession of a pair of boots, the property of No. , Sepoy , Regiment.

No. 83.

CHARGE-SHEET.

[Section 39 (i).]

The accused, No. , Sepoy , Regiment, is charged with—

*An act prejudicial to good order and military discipline,*  
in that he, at , on , struck Sepoy of the same regiment, on the shoulder and head with a stick.

No. 84.

CHARGE-SHEET.

[Section 39 (i).]

The accused, No. , Driver , No. M. T. Company, Royal Indian Army Service Corps, is charged with—

*An act prejudicial to good order and military discipline,*  
in that he, at , on , so negligently drove motor lorry No. , the property of the Crown, as to cause the said lorry to be damaged to the amount of Rupees .

No. 85.

CHARGE-SHEET.

[Section 39 (i).]

The accused, Captain , Regiment, an Indian commissioned officer, is charged with—

*An act prejudicial to good order and military discipline,*  
in that he, at , between and while the officer commanding Company, Regiment, he was concerned in the care of public money, so negligently performed his duties as to be unable to account for Rupees , part of the said money.

No. 86.

CHARGE-SHEET.

[Section 39 (i).]

The accused, Captain , Regiment, an Indian commissioned officer, is charged with—

*An omission prejudicial to good order and military discipline,*  
in that he, at , on or about , having as President of the officers' mess, Regiment, received from Captain , the sum of Rupees eighty (Rs. 80) for and on account of the said mess, omitted to pay the said sum to the credit of the said mess, and thereby caused a loss of Rupees eighty to the said mess.

## INDIAN ARMY ACT RULES

No. 87.

## CHARGE-SHEET.

[Section 39 (i).]

The accused, Jemadar , Military Farms Department, is charged with—

*An omission prejudicial to good order and military discipline,*

in that he, at , between , and when in charge of the Military Grass Farm , omitted to exercise a proper supervision over the operations of stacking and the issue of bhoosa at the said Farm, and thereby caused a loss to the Crown of Rupees or thereabouts.

No. 88.

## CHARGE-SHEET.

[Section 39 (i).]

The accused, No. , Naik , Regiment, is charged with—

*An omission prejudicial to good order and military discipline,*

in that he, at , on after being duly warned by Havildar to parade the defaulters at 3 P.M. on that day, omitted to do so.

NOTE—This form of charge is applicable when wilful disobedience is not imputed.

No. 89.

## CHARGE-SHEET

[Section 39A, read with Section 34(b).]

The accused, No. , Havildar , Regiment, is charged with—

*Attempting to release without proper authority a prisoner placed under his charge and doing an act towards the commission of the same.*

in that he, at , on , when in command of the quarter guard of the Regiment, attempted to release without authority Sepoy who was confined in the said quarter guard and, with the intention of releasing the said Sepoy , unlocked the door of the prisoner's room.

## INDIAN ARMY ACT RULES

## No. 90.

## CHARGE-SHEET.

[Section 39A, read with Section 27 (a).]

The accused, No. , Lance-Duffadar , Regiment, is charged with—

*Attempting to excite a mutiny and doing an act towards the commission of the same,*

in that he, at , on attempted to excite the non-commissioned officers and men of Troop, Squadron, Regiment, to combine together and refuse to eat their rations next day and to demand from Lieutenant-Colonel commanding the said regiment that Jemadar be removed from his employment as Officer in charge of ration issue and to this end in the lines of the said troop addressed Duffadar , Sowar , Sowar and about ten other men belonging to the said troop in language to the effect following that is to say (set forth the language used in the endeavour to excite mutiny).

## No. 91.

## CHARGE-SHEET.

[Section 40.]

The accused, No. , Sepoy , Regiment, is charged with—

*Abetment within the meaning of the Indian Penal Code of an offence punishable under the Indian Army Act,*

in that he, at , on , when sentry over the Fort Magazine Guard between 3 A.M. and 4 A.M., by omitting to keep on the alert, intentionally aided Sepoy of the same regiment to steal one box of ammunition, value , the property of the Crown, and thereby abetted within the meaning of the Indian Penal Code an offence punishable under section 31 (d) of the Indian Army Act.

NOTE.—If there is any doubt as to the assistance being *intentional*, an alternative charge under section 39 (i) may be added.

## No. 92.

## CHARGE-SHEET.

[Section 41.]

The accused, No. , Havildar , Regiment, is charged with—

*Committing a civil offence, that is to say, sedition,*

in that he, at , on , by saying in the presence of Naik , Lance Naik and other non-commissioned officers and men of the Regiment present in the regimental Gurdwara “(set out the words used)”, or words to that effect, attempted to excite disaffection towards the Government established by law in British India.



## INDIAN ARMY ACT RULES

No. 93.

## CHARGE-SHEET.

[First charge, Section 41.]

The accused, No. , Sepoy , Regiment, is charged with—

*Committing a civil offence, that is to say, rioting,*

in that he, at , on , was a member of an unlawful assembly, which, in prosecution of the common object of such assembly to use criminal force to the civil police, beat the civil police with lathis, thereby committing the offence of rioting.

[Second charge, section 41 (alternative to first charge.)]

*Committing a civil offence, that is to say, being a member of an unlawful assembly,*

in that he, at the place and on the day aforesaid, was a member of an unlawful assembly, the common object of which was to use criminal force to the civil police.

No. 94.

## CHARGE-SHEET.

[Section 41.]

The accused, No. , Sepoy , Regiment, is charged with—

*Committing a civil offence, that is to say, murder.*

in that he, at , on , by causing the death of Major , Regiment, committed murder.

No. 95.

## CHARGE-SHEET.

[Section 41.]

The accused, No. , Sepoy , Regiment, is charged with—

*In a Frontier Post specified by the Central Government by notification under section 41 of the Indian Army Act, committing a civil offence, that is to say, culpable homicide not amounting to murder,*

in that he, at , on , by causing the death of a man named , committed culpable homicide not amounting to murder.

No. 96.

## CHARGE-SHEET.

[Section 41.]

The accused, No. , Driver , No. M. T. Company, Royal Indian Army Service Corps, is charged with—

*Committing a civil offence, that is to say, causing death by a rash or negligent act not amounting to culpable homicide,*

in that he, near , on , by rashly or negligently driving a motor lorry caused the death of one , a syce.

## INDIAN ARMY ACT RULES

No. 97.

## CHARGE-SHEET.

[Section 41.]

The accused, No. , Sepoy , Regiment, is charged with—

*Committing a civil offence, that is to say, attempt to murder,*  
in that he, at , on , fired two shots from a rifle at  
Captain Regiment, with intent to kill him,  
and thereby wounded the said Captain in the right breast  
and left thigh.

No. 98.

## CHARGE-SHEET.

[Section 41.]

The accused, No. , Sepoy , Regiment, is charged with—

*Committing a civil offence, that is to say, voluntarily causing grievous hurt.*  
in that he, at , on , voluntarily caused grievous hurt  
to , by fracturing his arm with a heavy stick.

No. 99.

## CHARGE-SHEET.

[First charge, Section 41.]

The accused, No. , Sepoy , Regiment, is charged with—

*Committing a civil offence, that is to say, theft.*  
in that he, at , on , committed theft in respect of a tin  
of ghee, value , from the shop of in the Suddar  
Bazar, the property of the said .

[Second charge, section 41 (alternative to first charge).]

*Committing a civil offence, that is to say, dishonestly receiving stolen property.*

in that he, at , on , dishonestly received a tin of ghee,  
value , stolen from the said , knowing or having  
reason to believe the same to have been stolen.

No. 100.

## CHARGE-SHEET.

[Indian Reserve Forces Act, 1888, Section 6(I)(a).]

The accused, No. , Sepoy (Reservist) , Regi-  
ment, is charged with—

*When required in pursuance of a rule under the Indian Reserve Forces Act to attend at a place, failing without reasonable excuse to attend in accordance with such requirements.*

in that he, having in pursuance of Indian Reserve Forces Rule 5-A been required by his Commanding Officer, the officer commanding

Regiment, to attend at , on , for training,  
failed without reasonable excuse so to attend.

*Signature of Commanding Officer.*

## INDIAN ARMY ACT RULES

To

## MEDICAL OFFICER'S CERTIFICATE.

I certify that No. \_\_\_\_\_, \_\_\_\_\_ Regiment,  $\frac{\text{is fit}}{\text{unfit}}$  to undergo  
trial by Court-Martial.

*Signature of the Medical Officer.*

(a) Here insert name of—

(i) Officer who investigated the charges.

(ii) Company, etc., Commander who made preliminary enquiry into the case.

(iii) Officer who took down the Summary of Evidence [Rule 29 (B) (iii)].

(b) To be filled in if there has been a Court of Inquiry respecting any matters connected with the charges; otherwise to be struck out [Rule 29 (B) (iii)]

(c) To be filled in by the Commanding Officer.

(d) Any items not applicable to be struck out.

(e) One copy to be sent to the President; one copy to be filed with the application for trial.

(f) Original summary of evidence to be sent to the President.

(g) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.

(h) 5 and 8 to be sent to the President.

## THIRD APPENDIX

## FORMS AS TO COURTS-MARTIAL.

## FORMS FOR ASSEMBLY OF COURTS-MARTIAL.

## GENERAL AND DISTRICT.

*Form of order for the Assembly of a General (or District) Court-Martial under the Indian Army Act.*

Orders by

Commanding the

(Place                      date                      ).

The detail of officers as mentioned below will assemble at  
on the                      day of                      for  
the purpose of trying by a                      court-martial the accused  
person (persons) named in the margin (and such other person or per-  
sons as may be brought before them.)\*

The senior officer to sit as President.

MEMBERS.

WAITING MEMBERS.

JUDGE-ADVOCATE.

is appointed Judge-Advocate.

INTERPRETER.

is appointed Interpreter.

PROSECUTOR.

is appointed Interpreter.

†The accused will be warned, and all witnesses duly required to attend.

The proceedings (of which only one copy is required) will be forwarded to—

Signed this                      day of

*\*Any opinion of the convening officer with respect to the composition of the court (see Rule 30) should be added here, thus:*

“In the opinion, of the convening officer, it is not practicable to appoint officers of different corps or departments” or,

“In the opinion of the convening officer, officers of equal or superior rank to the accused are not, having due regard to the public service, available”.

†Add here any order regarding Counsel—see Rule 82.

NOTE —  
These mem-  
bers and the  
waiting mem-  
bers may be  
mentioned by  
name, or the  
number and  
ranks and the  
mode of ap-  
pointment  
may alone be  
named.



## INDIAN ARMY ACT RULES

## SUMMARY GENERAL.

## I. A. F. F.-956.

(See combined form for assembly and proceedings below.)

## I. A. F. D.-920.

## FORM OF DECLARATION FOR SUSPENSION OF RULES UNDER RULE 25.

\*(The necessities of discipline.) In my opinion [\*military exigencies, namely (*state them*)] render it  
 †(or impossible) to observe the provisions of rule‡ on the  
 †(or inexperienced.) trial of by court-martial  
 ‡State the assembled pursuant to the order of the  
 rule or rules of  
 which  
 cannot be  
 observed.  
 (See Rule 5.) Signed at this day of A. B.

(Instruction. —This declaration must be signed by the officer whose opinion is given, and will be annexed to the proceedings. It should not be included in the Convening Order but should be a separate document.)

## I. A. F. D.-906.

## §FORMS OF PROCEEDINGS OF COURTS-MARTIAL

All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.  
 Form of Proceedings of a General (or District) Court-Martial (including some of the incidents which may occur to vary the ordinary course of procedure, with instructions for the guidance of the Court.)  
 Proceedings of a Court-Martial, held at  
 on the day of 19 by order of  
 Commanding , dated the day of  
 19 .

PRESIDENT.

Rank Name. Regiment.

MEMBERS.

Rank Name. Regiment.

Judge-Advocate.

Inspector.

\*Here insert Trial of\*  
 No., Rank,  
 Name,  
 Regiment  
 and appoint-  
 ment (if  
 any).

The order convening the Court, the charge sheet, and the summary (or abstract) of evidence are laid before the court.

[Instruction.—All documents relating to the Court, or the matters before it, which are intended to form part of the proceedings (such as an order respecting military exigencies, or a letter answering any question referred to the convening officer) at whatever period of the trial they are received should be read in open Court, marked so as to identify them, signed by the president (judge-advocate), and attached to the proceedings.]

†Here insert reason.

The Court satisfy themselves that is not available to serve owing to†\*\* waiting member takes his place as a member of the Court.

\*\*Here insert Rank, Name and Regiment.

The Court satisfy themselves as provided by Rules 31 and 32.

NOTE.—Before certifying that the Court have satisfied themselves as provided by Rules 31 and 32, the President will, in every case where a Court of Inquiry has been held respecting a matter upon which a

## INDIAN ARMY ACT RULES

*charge against the accused is founded, insert an asterisk after the words "Rules 31 and 32", and enter in red ink and sign a footnote at the bottom of the first page of the proceedings, to the following effect :—*

I have satisfied myself that none of the officers detailed as members of this Court has previously served upon any Court of Inquiry respecting the matters forming the subject of the charge (charges) before this Court-Martial.

(Signature of President)

The accused is brought before the Court.

Prosecutor.†

Counsel\* or defending officer‡

at o'clock the trial commences.

The order convening the Court is read and is marked signed by the president and attached to the proceedings.

The names of the president and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Do you object to be tried by me as president, or by any of the officers whose names you have heard read over ?

(Instruction.—*The questions are to be numbered throughout consecutively in a single series. The letters Q and A in the margin may stand for Question and Answer respectively.*

\*Qualification to be stated.  
†Here state Rank, Name and Regiment (if any).

Question by the President to the Accused.  
Answered by Accused.

## VARIATIONS.

## CHALLENGING OFFICERS (Rule 34).

*Answer.*—I object to

*Question to accused.*—Do you object to any other person ?

(*This question must be repeated until all the objections are ascertained.*)

*Question to accused.*—What is your objection to (*the junior officer objected to*) ?

*Answer by accused.*—(*set out*).

The accused in support of his objection to , requests permission to call etc., etc.  
is called into Court, and is questioned by the accused (*set out*).

The Court is closed to consider the objection.

*Decision.*—The Court disallow the objection.

The Court is re-opened, and the above decision is made known to the accused.

or

*Decision.*—The Court allow the objection.

The Court is re-opened, and the above decision is made known to the accused.

retires

Fresh Member.—‡  
member of the Court.

takes his place as a ‡Insert Rank Name and Regiment.

## INDIAN ARMY ACT RULES

*(This only applies in the case of there being a waiting member of the Court.)*

He appears to the Court to be eligible and not disqualified to serve on this court-martial.

*Question to accused.*—Do you object to be tried by (the fresh member) ?

*Answer.*—

*(If he objects the objections will be dealt with in the same manner as the former objection.)*

*Question to the accused.*—What is your objection to (the junior of the officers objected to) ?

*(This objection will be dealt with in the same manner as the former objection.)*

The Court adjourn for the purpose of fresh members being appointed.

*or.*

The Court is of the opinion that in the interests of justice and for the good of the service, it is inexpedient to adjourn for the purpose of fresh members being appointed, because *(here state the reasons)*.

At o'clock on the Court resume their proceedings, an order appointing fresh officers, is read, marked , and attached to the proceedings.

The Court satisfy themselves with respect to such fresh officers as provided by Rule 31.

*(Instruction.—The procedure as to challenging fresh officers, and the procedure, if any objection is allowed, will be the same as above.)*

*The president and members of the Court, as constituted after the above proceedings, are as follows :—*

## PRESIDENT

Rank	Name	Regiment.
------	------	-----------

## MEMBERS

Rank	Name	Regiment.
------	------	-----------

The president, members, and judge-advocate are duly sworn (or affirmed) (also any officer under instruction).

*[Instructions.—(1) The witnesses if in Court, other than the prosecutor, should be ordered out of the Court at this stage of the proceedings.*

*(2) Also any interpreter and short-hand writer should be now sworn.*

*(3) A member of the Court appointed interpreter must take the interpreter's oath in addition to the oath administered to him as a member of the Court.]*

*Question to the accused.*—Do you object to as interpreter?

*A.*—

Do you object to as short-hand writer?

*(Instruction.—In case of objection the same procedure will be followed as in the case of an objection to a member of the Court.)*

## INDIAN ARMY ACT RULES

## CHARGE-SHEET.

The charge-sheet is signed by the president (judge-advocate) marked and annexed to proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

*Question to the accused.*—Are you guilty or not guilty of the (first) charge against you, which you have heard read?

A.—

[Instruction.—When there is more than one charge the foregoing question will be asked after each charge (whether alternative or not) is read, the number of the charge being stated.]

(Instruction.—If the accused pleads guilty to any charge, the provisions of Rule 42 (B) must be complied with, and the fact that they have been complied with must be recorded. Where there are alternative charges and the accused pleads guilty to the less serious charge, the Court, if they decide to proceed upon the more serious charge, will enter after the plea as recorded : “The Court proceed as though the accused had not pleaded guilty to any charge”.)

## VARIATIONS.

## OBJECTION TO CHARGE (Rule 39).

The accused objects to the charge on the ground that (*set out*).

The Court is closed to consider their decision.

The Court disallow the objection (*or*, the Court allow the objection, and agree to report to the convening authority).

The Court is re-opened, and the above decision is made known to the accused.

The Court proceed with the trial (*or*, adjourn).

## AMENDMENT OF CHARGE (Rule 40).

The Court, being satisfied that the name (*or* description) of the accused is and not as stated in the charge-sheet, amend the charge-sheet accordingly.

*or*,

The Court, before any witnesses are examined, consider that, in the interests of justice, the following addition to (*or* omission from *or* alteration in) the charge is required (*set out*), and adjourn to report their opinion to the convening authority.

## PLEA TO THE JURISDICTION (Rule 41).

The accused pleads to the general jurisdiction of the Court on the ground that (*set out*).

Do you wish to produce any evidence in support of your plea?

Witness is examined on oath (*or* affirmation).

*Question to the Accused*  
A.

(Instruction.—The examination, etc., of the witnesses called by the accused and of any witnesses called by the prosecutor in reply,

## INDIAN ARMY ACT RULES

*will proceed as directed below in the case of witnesses to the facts at the trial. The prosecutor will be entitled to reply after all the evidence is given.)*

The Court is closed to consider their decision.

The Court (a) overrule the plea and decide to proceed with the trial;

*or (b) allow the plea and decide to report to the convening authority, and adjourn ;*

*or (c) are in doubt as to the validity of the plea and decide to refer the matter to the convening authority and adjourn (or make the following special decision (set out) and decide to proceed with the trial).*

The Court is re-opened, and the above decision is made known to the accused.

The Court proceed with the trial (or adjourn).

## PLEA IN BAR OF TRIAL (Rule 43).

Accused, besides the plea of guilty (or, not guilty), offers a plea in bar of trial.

Question to  
the Accused  
A.  
Q.  
A.

What are the grounds of your plea ?

Do you wish to produce any evidence in support of your plea?

Witness is examined on oath (or affirmation).

*(Instruction. —The examination, etc., of the witnesses called by the accused, and of any witnesses called by the prosecutor in reply, will proceed as directed below in the case of witnesses to the facts at the trial. The prosecutor will be entitled to reply after all the evidence is given.)*

The Court is closed to consider their decision.

The Court allow the plea and resolve to adjourn (or to proceed with the trial on another charge) (or the Court overrule the plea).

The Court is re-opened, and the above decision is made known to the accused.

The Court adjourn (or proceed with the trial on another charge) (or proceed with the trial).

## REFUSAL TO PLEAD [Rule 42 (A)].

As the accused does not plead intelligibly (or refuses to plead) to the above charge, the Court enter a plea of "not guilty".

The accused having pleaded guilty to the \_\_\_\_\_ charge the provisions of Rule 42 (B) are here complied with.

## PROCEEDINGS ON PLEA OF GUILTY.

\*[The Court having been re-opened, the accused is again brought before it, and the charge (charges) to which he has pleaded guilty is (are) read to him again.]

\*To be struck out in case no plea of "not guilty" has been proceeded with.



## INDIAN ARMY ACT RULES

The accused (number \_\_\_\_\_, rank \_\_\_\_\_  
 name....., regiment \_\_\_\_\_)  
 is found guilty of the charge (all the charges)

or,

is found guilty of the \_\_\_\_\_ charge, and is found not guilty  
 of the \_\_\_\_\_ charge.

(Instruction.—If the trial proceeds upon any charge to which there is a plea of not guilty, the Court will not proceed upon the record of the plea of guilty until after the finding on that other charge; and in that case the Court will be re-opened and the charge on which the record is guilty must be read to the accused again.)

The accused may, in accordance with rule 44 (B), make any statement he wishes in reference to the charge.

The summary (or abstract) of evidence is read (orally translated), marked \_\_\_\_\_, signed by the president (judge-advocate), and attached to the proceedings.

[Instruction.—If there is no summary (or abstract) of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case will be taken on a separate sheet as on a plea of not guilty.]

Do you wish to make any statement in mitigation of punishment? Question to  
the Accused.

The accused in mitigation of punishment says [or, if the statement is in writing, hands in a written statement, which is read (orally translated), marked \_\_\_\_\_, signed by the president (judge-advocate), and attached to the proceedings.]

(Instruction.—If the statement of accused is not in writing, the material portion should be taken down in the first person, and as nearly as possible in his own words.

If counsel or defending officer addresses the Court on behalf of the accused the material portions of his address should be recorded.

In any case any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in mitigation of punishment.)

## VARIATIONS.

## ALTERATION OF PLEA [Rule 44 (D).]

The Court being satisfied from the statement of the accused (or the summary of evidence, or otherwise), that the accused did not understand the effect of the plea of "guilty" enters in the proceedings: "The Court consider that the accused does not understand the effect of his plea of "guilty", alter the record, and enter a plea of "not guilty".

(Instruction.—The Court will then proceed in respect of the charge as on a plea of not guilty.)

## INDIAN ARMY ACT RULES

## WITNESSES FOR DEFENCE ON PLEA OF GUILTY [Rule 44 (F)].

The Court give permission to the accused to call witnesses to prove his above statement that (*here specify the statement which is to be proved*).

(Instruction.—*The examination, etc., of witnesses called in pursuance of this permission will proceed in the same manner as on a plea of not guilty.*)

Do you wish to call any witnesses as to character?

Question 1 to  
the Accused.  
A.

(Instruction.—*The examination, etc., of witnesses as to character will proceed as in the case of a witness giving evidence as to the facts of the case.*)

## PROCEEDINGS ON PLEA OF NOT GUILTY

The prosecutor makes an opening address, or hands in a written address, which is read, (orally translated), marked , signed by the president (judge-advocate), and attached to the proceedings.

(Instruction.—*Where the address of the prosecutor is not in writing, the Court should record so much as appears to them material, and the record should be attached to the proceedings.*)

The prosecutor proceeds to call witnesses.

\*

being duly sworn (affirmed)

First witness  
or prosecu-  
tion. is examined by the prosecutor.

Cross-examined by the Accused (or by Counsel, or Defending Officer.)

Re-examined by the Prosecutor.

Questioned by the Court.

[Instructions.— (1) *The fact that Rule 127 (B), (C), (D) has been complied with must be recorded at the conclusion of the evidence of each witness.*

(2) *If the accused, or his counsel, or defending officer declines to cross-examine a witness that fact must be recorded.]*

## VARIATIONS

## POSTPONEMENT OF CROSS-EXAMINATION (Rule 121).

The Court, at the request of the accused, allow the cross-examination of the witness to be postponed.

## OBJECTION TO EVIDENCE OR PROCEDURE (Rule 74).

The accused (or counsel or defending officer or the prosecutor) objects to the following question on the ground that (*set out*).

The Court is closed to consider their decision.

The Court overrule (or allow) the objection, and the Court is reopened and the decision announced and the Court proceed with the trial.

*\*Here insert his number, rank, name, regiment and appointment (if any), or other description.*

## INDIAN ARMY ACT RULES

EXPLANATION OR CORRECTION OF EVIDENCE [*Rule 127 (B)*].

The witness, on his evidence being read to him, makes the following explanation *or* correction (*set out*).

Examined by the prosecutor as to the above explanation *or* correction.

Examined by (*or* on behalf of) the accused as to the above explanation *or* correction.

The prosecutor and accused (*or* counsel *or* defending officer) decline to examine him respecting the above explanation *or* correction.

being duly sworn, (affirmed) is examined by the prosecutor.

(*The examination, etc., of this and every other witness proceeds as in the case of the first witness.*)

Second  
witness for  
prosecution.

## VARIATIONS

## ADJOURNMENT

At o'clock the Court adjourn until o'clock  
on the of 19 , at  
On the o'clock, the Court re-assemble, pursuant to adjourn-  
ment: present the same members as on the of

[Instructions.—(1) *If upon re-assembly a member is absent, and his absence will reduce the Court below the legal minimum and, it appears to the members present that the absent member cannot attend within a reasonable time, the president or senior member present will thereupon report the case to the convening authority.*

(2) *If the judge-advocate is absent, and cannot attend within a reasonable time, the Court will adjourn, and the president will thereupon report the case to the convening authority. (See Rule 90).]*

## ABSENCE OF MEMBER.

(Rank , Name , Regiment) being absent.

A medical certificate (*or* letter, *or* as the case may be) is produced, read marked , and attached to the proceedings.

The Court adjourn until

*or,*

There being present , (*not less than the legal minimum*) members, the trial is proceeded with  
Examination (cross-examination) of continued.

The prosecution is closed.

## DEFENCE.

Do you intend to call any witness in your defence ?

Is he a witness as to character only ?

Instructions to the Court.

Question to  
the accused.  
A.  
Q.  
A.

(1) *When the answers to the above questions have been recorded the Court will follow the provisions of Rules 47 and 48 respecting the order of evidence and addresses which is applicable to the circumstances of the case.*

## INDIAN ARMY ACT RULES

(2) *All addresses by prosecutor, accused, counsel or defending officer, whether recorded by the Court or handed in in writing, will be attached to the proceedings in the order in which they are made. Written addresses will be read to the Court, marked and signed by the President.*

*If any person who is entitled to make an address declines to do so, a record will be made to that effect.*

*(Where any evidence is given for the defence.)*

The evidence of the witnesses for the defence (including witnesses as to character) is recorded on a separate page.

Have you anything to say in your defence?

Question to  
the accused.  
A.

The accused in his defence says [See Instruction (I) below] (or hands in a written address, which is read (orally translated) marked , signed by the president (or judge-advocate) and attached to the proceedings).

[Instructions. (1) *In this space will be recorded any oral statement or address made by the accused in his defence. (For any additional address which he is entitled to make, see Instructions to the Court above.)*

(2) *If the statement of the accused is not in writing, and is delivered by himself, the material portions should be taken down in the first person and as nearly as possible in his own words.*

*Any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]*

[Instruction.—All evidence given upon oath (or affirmation) will be recorded in the following form] :—

being duly sworn (affirmed) is examined by the  
First witness accused (or counsel or defending officer).  
for the  
defence.

Cross-examined by the Prosecutor.

Re-examined.

Question by the Court.

\*Here insert  
his number,  
rank, name,  
regiment and  
appointment  
(if any) or  
other  
description.

[Instructions. (1) *The fact that Rule 127 (B), (C), (D) has been complied with should be recorded.*

(2) *If the prosecutor declines to cross-examine, that fact must be recorded.*

(3) *The evidence of witnesses to character will be taken in the same manner as that of witnesses to the facts.]*

## VARIATIONS

## ADJOURNMENT TO PREPARE DEFENCE

The Court at the request of the accused (or counsel or defending officer) adjourn until in order to enable him to prepare his defence.

## INDIAN ARMY ACT RULES

RECALLING WITNESSES (*Rule 129*).

- (1) At the request of the prosecutor (*or* of the accused) is recalled and examined on his former oath through the president (*or* judge-advocate) and states as follows (*set out*);

*or.*

- (2) The prosecutor with leave of the Court calls (*or* recalls) for the purpose of rebutting a material statement made by a witness for the defence. The witness being duly sworn (*or* on his former oath) being examined by the prosecutor states as follows (*set out with any cross-examination, re-examination, etc.*);

*or.*

- (3) The prosecutor calls (*or* recalls) in reply to the witness(es) as to character called by the accused. The witness being duly sworn (*or* on his former oath) being examined by the prosecutor states as follows (*set out with any cross-examination, re-examination, etc.*);

*or.*

- (4) The Court in accordance with Rule 129 (D) calls (*or* recalls) who being duly sworn (*or* on his former oath) states in reply to the president (*or* judge-advocate) as follows (*set out*).

[Instruction.—In (1), (2) and (3) witnesses must be called *or* recalled before the closing address of *or* on behalf of the accused. In (4) witnesses may be called by the Court at any time before the finding; in this case the accused *or* counsel *or* defending officer should be given the opportunity of asking further question through the Court.]

## ADJOURNMENT TO PREPARE ADDRESSES, ETC.

The Court, at the request of the accused (counsel *or* defending officer) adjourn until to enable the accused counsel *or* defending officer) to prepare his address.

The Court, at the request of the prosecutor adjourn until to enable the prosecutor to prepare his reply.

The Court, at the request of the judge-advocate, adjourn to enable him to prepare his summing-up.

The accused (counsel *or* defending officer) makes the following closing address (*or* hands in a written closing address) which is read (orally translated) marked , signed by the president (*or* judge-advocate), and attached to the proceedings.

*or*

The accused (counsel *or* defending officer) declines to make a closing address.

The prosecutor makes the following reply (*or* hands in a written reply) which is read (orally translated) marked , signed by the president (*or* judge-advocate) and attached to the proceedings.

*or.*

The prosecutor declines to reply.



## INDIAN ARMY ACT RULES

*Summing-Up.*

The judge-advocate hands in a written summing-up, which is read (orally translated), marked , signed by the president, and attached to the proceedings.

*or.*

The judge-advocate and the Court think a summing-up unnecessary.

[Instructions.—(1) *The occasions when the prosecutor's closing address must precede that of the accused (counsel or defending officer) are given in Rule 47 (B) (i) (b) and 37 (B) (ii) (d).*

(2) *Where the address of the prosecutor (or counsel or the defending officer) is not in writing, the Court should record as much as appears to them material, and so much as the prosecutor (counsel or the defending officer) requires to be recorded.*

*Care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.*

*If the address of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.]*

## FINDING.

\*The Court is closed for the consideration of the finding.

(1) *Acquittal on all charges.*

The Court find that the accused (No. , Rank , Name , Regiment ) is not guilty of the charge (or, all the charges) (and honourably acquit him of the same) :  
Signed at , this day of 19 .  
(Judge-Advocate). (President).

\*To be struck out except in cases where trial has taken place on a plea of "not guilty"

(2) *Acquittal on some but not all charges.*

is not guilty of the charge(s) (and honourably acquit him of the same) but is guilty of the charge(s) ;

(3) *Conviction on all charges.*

is guilty of the charge (or, all the charges) ;

(4) *Special Findings.*

(a) is guilty of the charge(s) and guilty of the charge with the exception of the words (*set out*) [or, with the exception that (*set out*).]

*or.*

(b) is not guilty of (desertion) but is guilty of (absence without leave).

[Instruction.—Any special finding permitted by Rule 51 (D) will be framed as far as possible in accordance with (a). Any special finding allowed by Section 86 of the Indian Army Act may be expressed in accordance with (b).]

## INDIAN ARMY ACT RULES

(5) *Reference to Confirming Authority [Rule 51 (C)].*

The Court find as regards the charge that the accused did (*set out the facts which the Court find to be proved*), but doubt whether the facts proved show the accused to be guilty or not of the offence charged [*or of the offence of (any offence of which the accused might under the Act legally be found guilty on the charge as laid)*]. They therefore refer to the confirming authority for an opinion and adjourn.

or,

*Rule 51 (G).*

(*Note.—This applies only to alternative charges.*)

The Court find that the accused did (*set out such particulars of the charge as the Court find to be proved*), but doubt whether such facts constitute in law the offence stated in the charge or in the charge.

They therefore refer to the confirming authority for an opinion and adjourn.

(*in either case.*)

The Court reassemble on the day of 19 .  
The opinion of the confirming authority is read, marked signed  
by the president and attached to the proceedings.

The Court now find the accused (No. , Rank , Name  
, Regiment ) is (*the finding to be recorded in the usual manner*).

(6) *Insanity.*

The Court find that the accused (No. , Rank , Name  
, Regiment ) is of unsound mind and consequently incapable of making his defence.

or,

committed the act (acts) alleged as constituting the offence (offences) specified in the charge (charges) but was by reason of unsoundness of mind incapable of knowing the nature of that act (those acts) (*or but was by reason of unsoundness of mind incapable of knowing that that act was wrong (those acts were wrong) (or contrary to law).*)

Signed at , this day of 19 .  
(Signature.) (Signature.)  
Judge-Advocate. President.

## PROCEEDINGS OF CONVICTION

*Before sentence.*

\*Where the Court is already open this sentence will be struck out.

\*The Court being re-opened the accused is again brought before  
(Rank , Name , Regiment ) is duly sworn (*or affirmed*).

Question by President. What record have you to produce in proof of former convictions against accused and of his character?

## INDIAN ARMY ACT RULES

I produce a statement certified under the hand of the officer having custody of the regimental (or other official) records. Answer by witness.

The statement is read (orally translated), marked signed by the president (judge-advocate), and attached to the proceedings.

Is the accused the person named in the statement you have heard read ? Q. A.

Have you compared the contents of the above statement with the regimental (or other official) records ? Q. A.

Are they true extracts from the regimental (or other official) records and is the statement of entries in the defaulter sheet a fair and true summary of those entries ? Q. A.

Cross-examined by the accused (or by counsel, or defending officer).

Re-examined.

or,

The accused declines to cross-examine this witness.

[Instructions.—(1) If any evidence, other than documentary, is given, the fact that Rule 127 (B), (C), (D) has been complied with will be recorded.

(2) Any further question will be put and any evidence produced which the Court require as to any point respecting the character and service of the accused on which the Court desire to have information for the purpose of their sentence.

(3) At the request of the accused, or by the direction of the Court the regimental or other official books, or a certified copy of the material entries therein, must be produced for the purpose of comparison with the statement.

The accused is entitled to call the attention of the Court to any entries in the regimental or other official books, or in the certified copy abovementioned, and to show that they are inconsistent with the statement.

When all the evidence on the above matters has been given the accused may address the Court thereon.

(4) If by reason of the nature of the service of the accused, the finding of the Court renders him liable to any exceptional punishment, in addition to that to be awarded by the Court, the prosecutor must call the attention of the Court to the fact, and the Court must enquire into the nature and amount of that additional punishment.]

Do you wish to address the Court?

The Court is closed for the consideration of the sentence.

Question to the accused.  
Answer.

## SENTENCE.

[Instruction.—The provisions of sections 43 to 48 and 73 of the Indian Army Act must be carefully attended to by the Court in passing sentence.]

The Court sentence the accused (No. . Rank . Name Sentence.  
Regiment ).

(Instruction.—The sentence is to be marginally noted in every case).

## INDIAN ARMY ACT RULES

In the case of an Indian commissioned officer :--

Death	(a) to suffer death by being (hanged).
Transportation for .	(b) to suffer transportation for the term of                      years (or for life).
Rigorous (simple) Imprisonment (and solitary confinement) for .	(c) to suffer rigorous (simple) imprisonment for                      of which shall be in solitary confinement.
Cashiered.	(d) to be cashiered.

(Instruction.-- *A sentence of cashiering should precede a sentence of imprisonment or transportation.*)

Dismissal.	(e) to be dismissed from the service.
	(f) to take rank and precedence as if his appointment as                      bore date the                      day of

or,

Forfeiture of seniority of rank.	to take precedence in the rank held by him, as if his name had appeared (a specified number of) places lower in the Indian Army List.
----------------------------------	---

Forfeiture of service for promotion.	(g) to forfeit                      service for the purpose of promotion.
--------------------------------------	---

(Instruction.--*This applies, only in the case of an officer whose promotion depends upon length of service, and a sentence can be inflicted in respect of all or any part of his service.*)

Severe reprimand or reprimand.	(h) to be severely reprimanded (or reprimanded)
Forfeitures.	(i) to forfeit (all or                      years, or                      months) past service for the purpose of                      .
	(j) to forfeit all arrears of pay and allowances and other public money due to him at the time of his (cashiering or) dismissal.
	(k) (If on active service) to forfeit pay and allowances for a period of                      .
Stoppages.	(l) to be put under stoppages of pay and allowances until he has made good the sum of                      in respect of or (and) until he has made good the value of the following articles, viz.,                      value                      , value                      , etc.

In the case of Viceroy's commissioned officers and other persons subject to the Indian Army Act :--

Death.	(m) to suffer death by being shot (hanged).
Transportation for	(n) to suffer transportation for a term of                      years (or for life).
Rigorous (simple) Imprisonment (and solitary confinement).	(o) to suffer rigorous (simple) imprisonment for                      (of which                      shall be in solitary confinement)

## INDIAN ARMY ACT RULES

(p) to be dismissed from the service.

Dismissal,  
Field  
punishment  
No. for

(q) (If under the rank of Warrant Officer, and on active service) to suffer field punishment No. for

(Instruction. — *In the case of a non-commissioned officer, a sentence of reduction to the ranks should precede a sentence of transportation, imprisonment, dismissal or field punishment, although those sentences necessarily involve a reduction to the ranks.*)

(r) (if a non-commissioned officer),

Reduction to

(1) to be reduced to the ranks; or.

(2) to be reduced to (a lower rank).

(s) (If a Viceroy's commissioned officer or a non-commissioned officer),

(1) to take rank and precedence as if his appointment to the rank of bore date ; Forfeiture of seniority.

or,

to forfeit service for the purpose of promotion ;

(Instruction. — *This applies only in the case of Viceroy's commissioned officer or a non-commissioned officer whose promotion depends upon length of service.*) Forfeiture of service for promotion.

or.

(2) to be severely reprimanded (or reprimanded) :

Severe reprimand or reprimand

(t) to forfeit (all or years, or months) past service for the purpose of ;

(u) to forfeit all arrears of any and allowances and other public money due to him at the time of his dismissal ;

(v) (if on active service) to forfeit pay and allowances for a period of ;

(w) to be put under stoppages of pay and allowances until he has made good the sum of in respect of or and until he has made good the value of the following articles, viz., value value , etc. Stoppages.

[Instruction. *In the case of a warrant officer, a district court-martial must use one of the following forms either in lieu of, or in addition to, such of the foregoing forms (t), (u), (v) and (w) as relate to forfeitures and stoppages, see Indian Army Act Section 73; a general court-martial may use them in lieu of, or in addition to, the foregoing forms.*]

(x) to be dismissed from the service ;

or,

(y) to be reduced to the ranks ;

or,

(z) to be reduced to (a lower grade);

or,

to be reduced to an inferior class of warrant officer; that is to say to

or,

(zz) to be reduced in the list of his rank as if his appointment thereto bore date the day of

or,

to take rank and precedence as if his appointment to the rank of bore date

to forfeit service for promotion;

or,

(zzz) to be severely reprimanded (or reprimanded)



## INDIAN ARMY ACT RULES

## RECOMMENDATION TO MERCY.

The Court recommend the accused to mercy on the ground that (*set out*).

Signature.

Signed at , this day of 19

(Signature.)

(Signature.)

*Judge-Advocate .*

*President.*

## REVISION

At , at On the day of o'clock, the Court re-assemble by order of for the purpose of reconsidering their

Present, the same members as on the

*(Instruction.—If a member is absent and the absence will reduce the Court below the required minimum, and it appears to the members present that such absent member cannot attend within a reasonable time, the president, or, in his absence, the senior member present, shall thereupon report the case to the convening authority.)*

The letter (order or memorandum) directing the reassembly of the Court for the revision, and giving the reasons of the confirming authority for requiring a revision of the finding (finding and sentence) (or sentence) is read, marked , Signed by the president (judge-advocate), and attached to the proceedings.

*(Instruction.—If the confirming authority so orders, additional evidence may be taken on revision).*

The court having attentively considered the observations of the confirming authority, and the whole of the proceedings:

(a) do now revoke their finding and sentence, and find the accused to

*or,*

(b) do now revoke their sentence, and now sentence the accused, etc., etc.,

*or,*

(c) do now respectfully adhere to their sentence (or finding and sentence.)

Signed at , this

day of 19 .

Judge-Advocate

President

## INDIAN ARMY ACT RULES

## CONFIRMATION.

Confirmed,

Confirmed. I direct that the sentence of (rigorous) imprisonment shall be carried out by confinement in military custody,

*or,*

I vary the sentence so that it shall be as follows and confirm the finding and the sentence as so varied,

*or,*

I confirm the finding and sentence of the Court, but mitigate (remit, *or,* commute

*or,*

*(Where the confirming officer desires partly to reserve his confirmation)*

I confirm the finding of the Court on the and charges and reserve for confirmation by superior authority the finding on the and charges, and the sentence :

*or,*

I confirm the findings of the Court, but reserve the sentence for confirmation by superior authority ;

*or,*

I confirm the findings of the Court, and the sentence of the Court as to , and reserve the sentence so far as it for confirmation by superior authority ;

*or,*

*(Where the finding is not confirmed.)*

Not confirmed *(the reasons for non-confirmation may be stated.)*

*or,*

*(Where a plea in bar of trial had been offered under Rule 43.)*

The finding of the Court that the plea in bar of trial is proved *(or not proved)* is confirmed *(or not confirmed)*.

*(Where the Court find that the accused is of unsound mind and consequently incapable of making his defence or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law.)*

Confirmed *(or not confirmed.)*

Signed at , this day of 19 .

*(Signature of confirming authority).*

## INDIAN ARMY ACT RULES

(Instruction.—Any remarks of the confirming authority should be separate from and form no part of the proceedings.)

## PROMULGATION.

Promulgated and extracts taken at this 19  
day of

(Signature of officer in charge of documents)

(Instruction.—Proceedings which are not confirmed must be promulgated.)

I.A.F.D.  
907

## FORM OF PROCEEDINGS OF A SUMMARY COURT-MARTIAL.

Proceedings of a Summary Court-Martial held at 19  
on the day of  
by  
commanding the for the trial of all such  
accused persons as he may duly have brought before him.

## PRESENT.

Commanding the

Attending the trial.

Interpreter.

(1) The Officers assemble at the o'clock M.  
and the trial commences at  
The accused No.

of the  
is brought ("called" if a non-commissioned officer) into Court,  
the Court is duly  
sworn (affirmed).

is duly sworn (affirmed) as Interpreter.

[Instruction.—If the commanding officer of the accused (i.e., the Court) acts as interpreter, he must take the interpreter's oath in addition to the oath prescribed for the Court.]

All witnesses are directed to withdraw from the Court.

The charge-sheet is read, (translated) and explained to the accused, marked, signed by the Court and attached to the proceedings.

(Instruction.—The sanction of superior authority for trial by summary court-martial should be entered, with the date and signature of the staff officer, at the foot of the charge-sheet, when such sanction is necessary. See I.A.A. Sec. 74.)

## ARRAIGNMENT.

Question to accused. By the Court.—How say you are you guilty, or not guilty  
of the charge preferred against you?  
A. Are you guilty or not guilty of the charge?

Question. [Instruction.—If the accused pleads "Guilty" adopt (2) and omit (3), (4) and (5); if he pleads "Not Guilty" adopt (3) and (4) or (5) and omit (2); if he pleads "Guilty" to some charge or charges and "Not Guilty" to others (not alternative) adopt (3), (4) or (5), and (2).]  
A.

## INDIAN ARMY ACT RULES

## PROCEEDINGS ON PLEA OF GUILTY.

(2) The accused (No. \_\_\_\_\_, Rank \_\_\_\_\_, Name \_\_\_\_\_ Regiment \_\_\_\_\_) is found guilty of the charge (all the charges).

or,  
is found guilty of the \_\_\_\_\_ charge. and is found not guilty of the \_\_\_\_\_ charge.

*(Instruction.—If the trial proceeds upon any charge to which there is a plea of not guilty, the Court will not proceed upon the record of the plea of guilty until after the finding on those other charges; and in that case the charge on which the record is guilty must be read to the accused again.)*

The summary of evidence is read (translated), explained, marked \_\_\_\_\_, signed by the Court and attached to the proceedings.

*[Instruction.—If there is no summary of evidence, sufficient evidence to enable the Court to determine the sentence and to enable the reviewing officer to know all the circumstances connected with the case will be taken as in paragraph (3). No address will be allowed.]*

## VARIATION

The Court being satisfied from the statement of the accused (or the summary of evidence, or otherwise) that the accused did not understand the effect of the plea of "guilty" alters the record and enters a plea of "not guilty".

*[Instruction.—The Court will then proceed in respect of this charge as in paragraph (3).]*

Do you wish to make any statement in reference to the charge \_\_\_\_\_ Question to accused.  
or in mitigation of punishment ?

The accused says \_\_\_\_\_ A.

Do you wish to call any witnesses as to character ? \_\_\_\_\_ Question to accused.

*[Instructions.—(1) The examination of witnesses as to character will proceed as in paragraph (3). A.*

*(2) Evidence as to character and particulars of service will be taken as in paragraph (6).]*

## PROCEEDINGS ON PLEA OF NOT GUILTY

## PROSECUTION.

(3) \_\_\_\_\_ being sworn (affirmed) is examined by the

Court

Prosecution  
1st witness.  
Religion to  
be recorded,  
(Hindu,  
Musalmán,  
Mh).  
Sikhs should  
Siksworn.

## INDIAN ARMY ACT RULES

Cross-examined by the accused.

Re-examined by the Court.

[Instructions.—(1) *The fact that Rule 127 (B), (C), (D), has been complied with must be recorded at the conclusion of the evidence of each witness.*

(2) *If the accused declines to cross-examine a witness the fact must be recorded.]*

## VARIATION.

POSTPONEMENT OF CROSS-EXAMINATION *Rule 121).*

The Court, at the request of the accused, allow the cross-examination of the witness to be postponed

The Prosecution is closed.

Question to  
accused.  
A.

Do you intend to call any witnesses in your defence?

## DEFENCE

Defence 1st  
witness.

The accused is called upon for his defence and states :—  
being duly sworn  
(affirmed) is examined by the accused.

Cross-examined by the Court.

Re-examined by the accused.

[Instruction.—*The fact that Rule 127 (B), (C), (D) has been complied with must be recorded at the conclusion of the evidence of each witness.]*

The defence is closed.

## REPLY

being duly sworn (affirmed)

Reply 1st  
witness.

is examined by the Court.

## VERDICT OF THE COURT.

Q  
A.

*Acquittal on all charges.*

(4) I am of opinion on the evidence before me that the accused No. , of the , is not guilty of the charge, (or all the charges) (and honourably acquit him of the same.)

The verdict is read out and the accused released. He is to return to his duty.

Signed at

this

day of

19 .

Commanding the  
holding the trial.  
o'clock M.

The trial closes at

*Acquittal on some but not all charges.*

(5) I am of opinion on the evidence before me that the accused No. of the charge(s) (and honourably acquit him of the same) but is guilty of the charge(s).



## INDIAN ARMY ACT RULES

*Conviction on all charges.*

is guilty of the charge (all the charges).

*Special Findings (I. A. A. Section 86 and Rule 107).*

is guilty of the charge(s) and guilty of the charge  
with the exception of the words (*set out*).  
is not guilty of (desertion) but is guilty of (absence without leave).

## PROCEEDINGS BEFORE SENTENCE.

(6) The following Minutes by the Court are read and explained.

[*Instruction.—If the Court does not record the accused person's convictions and character of its own knowledge, evidence as to these matters will be taken as in the Form of Proceedings for a General (or District) Court-Martial.*]

It is within my own knowledge, from the records of the  
that the accused has been  
previously convicted by Court-Martial or Criminal Court (A separate  
statement giving full particulars of any previous conviction to be annexed  
when necessary).

That the following is a fair and true summary of the entries in  
his defaulter sheet exclusive of convictions by a Court Martial or a  
Criminal Court.

	Within last 12 months.	Since Enrolment.
For	times	times
For	times	times
That he is at present undergoing sentence.		
That, irrespective of this trial, his general character has been		
That his age is		
his service is		
and his rank is		
that he has been in arrest (confinement) for days		
That he is in possession of the following military decorations and rewards:—		
(Any recognised acts of gallantry or distinguished conduct should also be entered here.)		

## SENTENCE BY THE COURT.

Taking all these matters into consideration, I now sentence the accused No. of the Sentence.

- |  |             |  |
|--|-------------|--|
| (a) to suffer rigorous (simple) imprisonment for<br>(of which solitary confinement) [and I direct that the sentence of (rigorous)<br>imprisonment shall be carried out by confinement in military<br>custody.] | shall be in | Rigorous<br>(Simple)<br>Imprisonment and<br>solitary<br>confinement<br>for |
| (b) to be dismissed from the service.  |             | Dismissal.   |
| (c) (if on active service) to suffer field punishment No.  | for         | Field Punishment No. or  |

## INDIAN ARMY ACT RULES

*(d) (if a non-commissioned officer)—*

Reduction.

(1) to be reduced to the ranks,

*or,*

(2) to be reduced to (a lower rank),

*or,*

(3) to take rank and precedence as if his appointment to the rank of bore date

Forfeiture of seniority.

(4) to forfeit service for the purpose of promotion.

*Instruction: This applies only in the case of a non-commissioned officer whose promotion depends upon length of service.)*

Severe reprimand or reprimand.

(e) to be severely reprimanded (*or* reprimanded).

Forfeitures.

(f) to forfeit past service for the purpose of :  
to forfeit all arrears of pay and allowances and other public money due to him at the time of his dismissal ;*(if on active service)* to forfeit pay and allowances for a period of

Stoppages.

(g) to be put under stoppages of pay and allowances until he has made good the sum of in respect of *or*  
(and) until he has made good the value of the following articles, viz., value, value, etc.

Signed at , this day of 19 .

Commanding the  
holding the trial.The trial closes at  
o'clock

M.

Remarks by Reviewing Officer.

(Indian Army Act, Section 102.)

## FORMS OF SUMMONS TO WITNESSES.

(a) In the case of a Summary of Evidence

To

I.A.F.D.  
919-A.

Whereas a charge of having committed an offence triable by court-martial has been preferred before me against (No. , Rank , Name , Unit ), and whereas I have directed a summary of the evidence to be taken in writing at (place) on the day of at o'clock in the noon;  
I do hereby summon and require you (name) , to attend as a witness at the said place and hour (and to bring with you the documents hereinafter mentioned, namely, ).

Whereof you shall fail at your peril.

Given under my hand at on the  
day of 19 .

(Signature)

Commanding Officer of the accused.

## INDIAN ARMY ACT RULES

## (b) In the case of a Court-Martial

To

Whereas a Court-Martial has been ordered to assemble I.A.F.D.  
 at on the day 919-B.  
 of 19 , for trial of  
 of the regiment. I do hereby summon  
 and require you A. B.  
 to attend, as a witness the sitting of the said Court at

on the day of  
 at o'clock in the forenoon (and to  
 bring with you the documents hereinafter mentioned, namely,  
 ), and so to attend from day to day until you  
 shall be duly discharged, whereof you shall fail at your peril.

Given under my hand at on the day of  
 19 . (Signature).

Convening Officer (or Judge-Advocate or  
 President of the Court or Commanding  
 Officer of the Accused).

FORM FOR ASSEMBLY AND PROCEEDINGS OF A SUMMARY I.A.F.F.  
 GENERAL COURT-MARTIAL 956

## A.—ORDER CONVENING THE COURT.

At (place) this day of 19 .

*\*(1) Beginning of Form in case falling under clause (a) of section  
 62 of the Indian Army Act.*

Whereas it appears to me an officer empowered in  
 this behalf by an order of the Central Government that the Person  
 named in the annexed schedule, Commander-in-Chief in India Persons  
 and being subject to Indian Military law, has committed the offence in the said schedule mention-  
have offences ed;

*\*(2) Beginning of Form in cases falling under clause (b) of section  
 62 of the Indian Army Act.*

Whereas it appears to me the officer  
an commanding the forces in the Field  
 empowered in this behalf by the officer commanding the force in the Field  
 on active service that the person named in the annexed schedule,  
persons and being subject to Indian Military law, has committed the offence  
have offences in the said schedule mentioned;

\*Only one of these will be used, the two which are inapplicable  
 being struck out.

## INDIAN ARMY ACT RULES

*\*(3) Beginning of Form in cases falling under clause (c) of section 62 of the Indian Army Act.*

Whereas it appears to me an officer  
 now in command of being a  
 detached portion of His Majesty's Troops upon active service that the  
~~person~~  
~~persons~~ named in the annexed schedule, and being subject to Indian  
 Military law, ~~has~~ offence  
~~have~~ offences committed the in the said schedule  
 mentioned and whereas I am of opinion that it is not practicable with  
 due regard to discipline and the exigencies of the service that the said  
~~offence~~  
~~offences~~ should be tried by an ordinary general court-martial;

*(4) End of form applicable to all cases.*

“\*The members and waiting members  
 (if any) may be appointed by name,  
 or only their ranks and units may  
 be mentioned. In the latter event,  
 the ranks, names, etc., of the mem-  
 bers of the court, as constituted,  
 will be recorded in the proceedings.

I hereby convene a summary general  
 court martial to try the said person/  
 persons and to consist of\*\*.

*[Here enter the special order (if any) under Rule 146 and any order under section 98 (1) (c) of the Indian Army Act.]*

*(Signature of convening officer.)*

**B.—CERTIFICATE OF PRESIDENT AS TO PROCEEDINGS.**

I certify that the above Court assembled on the day of  
 19 , and duly tried the ~~person~~  
~~persons~~ named in the said schedule,  
 and that plea, finding and sentence in the case of ~~such~~  
~~each such~~ person were  
 as stated in the third and fourth columns of that schedule.

I further certify that the members of the Court, the witnesses and  
 the interpreter were duly sworn or affirmed.

Signed at (place) this day of 19 .

*(Signature of President.)*

\*Only one of these will be used, the two which are inapplicable being struck out.

(In cases in which confirmation is required by section 98 of the Indian Army Act.)

Signed at (place)                      this                      day of                      19                      .

(Signature of confirming officer.)

Promulgated and extracts taken at this  
day of 19

(Signature of officer in charge of documents.)



# SCHEDULE

Date

19 .

Name of alleged offender.*	Offence charged.	Plea.	Finding, and if convicted sentence †	How dealt with by confirming officer.‡
1	2	3	4	5
Ram Bux (Bannia)	Theft of Crown Property	Guilty	Guilty. Rigorous imprisonment for.....	Confirmed. I remit A.----- B.-----
262 Sepoy Jhanda Singh, Regiment.	Breaking into house for plunder.	Not Guilty	Guilty. Field punishment No. I for two months.	
564 Sowar Hussein Khan, Regiment.	Sleeping on post in time of war.	Not Guilty	Guilty. Death by being shot to death. Recommended to mercy.	Confirmed, but commuted to field punishment No. I for three months.
Person accompanying force (name unknown), white jacket and trousers, scar on right cheek	Impeding Provost-marshal	Not Guilty	Not Guilty	A.----- B.----- Confirmed. A.----- B.-----
Sepoy in uniform of ----- Regiment (name unknown).	Civil offence Rape	Not Guilty	Guilty. Transportation for life.	Confirmed. A.----- B.-----

A----- B-----

Convening officer.

C----- D-----

President.

\*If the name of the person charged is unknown, he may be described as unknown, with such addition as will identify him.

†Recommendation to mercy to be inserted in this column.

‡If Confirmation is not required this column should be left blank. See Indian Army Act, section 98

## INDIAN ARMY ACT RULES

MEMORANDA FOR THE GUIDANCE OF OFFICERS  
CONCERNED WITH COURTS-MARTIAL.

The following memoranda as to courts-martial are intended for the guidance of commanding and convening officers and others with a view to securing uniformity of practice and to avoiding some common mistakes.

*These memoranda do not form part of the Appendices to the Indian Army Act Rules.*

*Summary of Evidence.*

1. The officer detailed to record a summary of evidence should—

- (a) Make himself acquainted with all the circumstances of the case and the testimony of the witnesses who gave evidence before the commanding officer, and carefully consider whether any additional evidence is relevant and necessary [see Rule 15 (D).]

Intelligent and patient investigation will often result in the discovery of a missing link in the chain of evidence, of corroborating evidence, or of evidence tending to exculpate the accused. It may even save an unnecessary or abortive court-martial.

(b) Before taking down the evidence:—

- (i) Consider what offence or offences appear to have been committed.
- (ii) Consider the essential elements of such offence, or of each offence.
- (iii) Consider what facts and circumstances must be proved in order to establish not only the commission of an offence but also the commission of it by the accused, *i.e.*, what facts are relevant to the issue.
- (iv) Consider what evidence should be adduced in order to prove each material fact; in other words, how it is proposed to prove each of the necessary facts by admissible evidence. He will generally find it convenient to ascertain from each witness roughly what evidence that witness can give before actually taking down the evidence.

(c) When reducing the evidence of witnesses to writing :—

- (i) Take down the evidence and arrange it, both in the statements of witnesses and in the summary, as far as possible so that events are set out in chronological order and the court may have a connected story to consider.

A statement of evidence as to facts should commence by recording the place, date and time (if material), to which the evidence refers.

- (ii) Ensure that only such evidence as is admissible in law is adduced; particularly eliminate all irrelevant and hearsay statements.
- (iii) Avoid attempting to tell the story of the crime by recording conversations at which the accused was not present.

## INDIAN ARMY ACT RULES

- (iv) Ascertain that any document intended to be produced is legally admissible in evidence. Every document intended to be produced to the court must be produced by a witness and described and, where necessary, identified by a witness able to do so. For example, where a document has been acknowledged as correct or signed by an accused, evidence must be given to show that he has acknowledged it or his signature must be identified.

**Mark and number documents according to order of production.**

- (v) Arrange for the preparation, production and proof of plans where necessary [see note to Rule 16 (A).]
- (vi) Recod the evidence of witnesses as nearly as possible in their own words and expressions. When evidence is not given in English, it will be interpreted and recorded in English.
- (vii) If the accused has to any person or at any time said anything by way of explanations or admission of any of the facts in issue, consider the circumstances in which the statement was made and if it is admissible let a witness be called to prove it.
- (viii) Remember that, when it is proposed to tender evidence of an admission or confession, it is desirable that evidence should first be adduced by the prosecution of the circumstances in which it was made to show that it was voluntary, though under Indian law the onus lies upon the accused of showing that a confession made by him was not voluntary (see Pt. I. Ch. V, paras. 28, *et seq.*)
- (ix) With regard to the attendance of witnesses, take advantage where desirable of the provisions of Rule 15 (H). The written statements of such witnesses must be signed and certified as required by this rule.
- (x) Remember that a civilian witness can be compelled to attend the taking of the summary [I. A. A. 84 and Rule 15 (I).]
- (xi) At the close of the evidence of each witness who is not cross-examined by the accused, make a note that "accused declines to cross-examine" [see Rule 15 (E).]
- (xii) Ensure that the evidence of each witness is signed by the witness [Rule 15 (F).]
- (xiii) Ensure that the record of any statement made by the accused is prefaced by a note that he was formally "cautioned" [Rule 15 (F).]
- (xiv) Enter at the end of the summary of evidence a statement that the requirements of Rule 15 (D), (E), (F), (G) have been complied with, and sign the summary. The place and date should be stated.

## 2. Evidence in special cases:—

- (a) Where the charge is for deficiency of kit, unless I. A. F. D-918 is to be produced in evidence, the fact that the accused has been at some time previously in possession of a complete

## INDIAN ARMY ACT RULES

kit. or of the articles alleged to be deficient, the date and place of discovering any subsequent deficiencies, and that none of the articles have since been recovered, should be included in the summary of evidence. Any articles recovered will be omitted from the charge.

- (b) Where a certified true copy of a record in any regimental book is to be produced [I. A. A. 91A (4)], the copy should show clearly that the record purports to have been signed by the commanding officer or by the officer whose duty it was to make the record [I. A. A. 91A (3).]
- (c) Where the charge is for neglecting to obey a battalion or similar order, the order should be proved as provided in I. A. A. 91A (3) or (4) [see (b) above] but if the order is not included in the "regimental books" (R. A. I.), as for example a station or company order or an order for sentries, the original order must be produced.
- (d) Where I. A. F. D-918 is to be produced, it must be signed by the officer having the custody of the books from which it is compiled. The original declaration of the court of inquiry even if in existence, is not admissible in evidence. Nor is I. A. F. D-918, unless the entry in the court-martial book (of which it is a certified copy) purports to have been signed by the officer in actual command of the accused's corps or department, as required by I. A. A. 126.
- (e) A certificate of surrender or apprehension under I. A. A. 91A (6) (I. A. F. D.-910) should only state the fact, date and place of the surrender or apprehension and is only admissible as evidence of those facts and only in cases of desertion or absence without leave. The circumstances of the surrender or apprehension must be proved by a witness. The certificate must be signed by a police officer not below the rank of an officer in charge of a police station.

The commanding officer of the deserter or absentee should forward I. A. F. D-910 without unnecessary delay to the officer in charge of the police station for completion and signature.

- (f) Many cases depend on the identification of persons or things. Evidence should be recorded to show that each witness identifies the accused, and any other person or thing mentioned in his evidence whose identity is relevant to the charge; e.g., on a charge for theft, the articles, the subject of the charge, must be produced and identified or their absence satisfactorily accounted for.

Articles alleged to have been damaged should be produced and identified.

- (g) Where the charge is for any offence which has occasioned any expense, loss, damage, or destruction for which it is expedient to award compensation under I. A. A. 50 (1) (b) or (2) (e) or (f) values should be assessed and evidence taken as follows:—

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- (i) When an article which has an official value has been lost or rendered unserviceable, a witness is required who can prove the value (inclusive of authorized departmental expenses) of the article at the date of loss upon a basis of its age and/or condition and by reference to the regulations which should be produced for fixing the value of the article at that age or in that condition.
  - (ii) When the article has not official value, competent evidence is required to prove the approximate value.
  - (iii) When an article has been damaged but not rendered unserviceable, competent evidence is required to prove the pecuniary amount of the damage, which will be either the cost of repairing it, if it can be repaired, or the loss of value caused by the act of the accused, if it cannot be repaired, or the cost of repair *plus* any ultimate loss of value due to the act of the accused.
  - (iv) In the case of absence or desertion, the deficiencies to be alleged in a charge under I. A. A. 35 (e) are those ascertained when the soldier rejoins, not necessarily those found on the commencement of the absence, or by a court of inquiry.
- Evidence should not be taken of the values of personal clothing and necessities the property of the soldier, the value of which has not to be made good to the public.

- (h) Where the charge is for misappropriating or losing by neglect money or stores, etc., the evidence should show :—
  - (i) The period during which the accused held office and was responsible for certain money or stores, etc. ;
  - (ii) That at the opening of this period the accounts and money, stores, etc., were correct ;
  - (iii) Receipts and expenditures of money, stores, etc., during this period;
  - (iv) That at the close of this period there was a specific deficiency of money or stores, etc.

Items (ii), (iii) and (iv) must, as a rule, be proved by the production by a sworn witness of the original account books, and vouchers, and evidence that they were kept or signed by the accused. Witnesses should then give evidence explaining the deficiency, which is checked with the original books, etc., and recorded.

- (i) In cases of attempts to commit suicide, medical evidence giving an opinion on the state of mind of the accused at the time of the commission of the alleged offence should be taken.
- (j) In cases of self-maiming the medical witness or witnesses should be asked whether the injury sustained by the accused will render him unfit for further service.

3. Where the accusation arises out of complaint made by an individual who has not yet identified the person whose conduct is complained of, the complainant, and any other alleged eye-witness in the



## INDIAN ARMY ACT RULES

same circumstances, should have an opportunity of picking out from a group the man against whom they are prepared to give evidence. For this purpose an identification parade should be held in the presence of an officer before the witness or witnesses give evidence at the summary, or otherwise see the accused in circumstances which may suggest that they are expected to recognize one particular man as the offender. At such a parade a witness should not be permitted to see or hear anything which might induce him to take a cue from the behaviour of another witness.

4. If in any case two or more persons are suspected of complicity in an offence, and it is found necessary to call one of these as a witness for the prosecution against the other or others charged in connection with the offence, one of two courses must be taken. Either:—

- (i) Proceedings against him must be abandoned and any charge therein already preferred against him dismissed ; or
- (ii) Steps must be taken to ensure that the case against him is disposed of summarily or tried by court-martial, before the trial of persons concerned against whom he is to give evidence ; and that he is only tendered as a witness when he has already been acquitted or convicted.

In all such cases the circumstances and the course proposed should be fully set out in a covering letter to the convening officer.

*Commanding Officers.*

5. A commanding officer will take care that an accused person is not detained in custody beyond 48 hours without the charge, being investigated, unless investigation is impracticable, in which case a report will be made to the officer to whom application to convene a general or district court-martial would be made (Rule 14).

6. Before applying for the trial of an offender a commanding officer should satisfy himself :—

- (a) That the accused is subject to the Indian Army Act, and is charged with an offence which is an offence against that Act ;
- (b) That the offender is not exempt from trial under the provisions of I. A. A. 67 ;
- (c) That the offence is not one which he should dispose of himself summarily or one which he should and can try by summary court-martial (R. A. I.) without reference (I. A. A. 74) or, if it is one of those offences, that from its gravity, or from the previous character of the accused, he ought not to deal with it on account of the inadequacy of his powers of punishment;
- (d) That the summary of evidence is properly recorded (see paras. 1 and 2 *ante*);
- (e) That the evidence justifies the trial of the offender on the charge;
- (f) That the charge is properly framed under the appropriate section (see Rules 18 to 20 and notes, and Second Appendix);

## INDIAN ARMY ACT RULES

- (g) That an officer has given the accused a copy of the summary (or abstract) of evidence as soon as practicable after he had been remanded for trial and that his rights as to preparing his defence and of being assisted or represented at the trial have been explained to him by that office [Rule 22 (B).]

7. When making application for the trial of the offender, the commanding officer should satisfy himself that the following provisions are complied with :—

- (a) The application for trial (A. F. B.-116) must be accompanied by all necessary documents as therein specified ; and the medical officer's certificate at the foot completed ; the application should ordinarily be submitted within 36 hours after the accused has been remanded for trial [note to Rule 16 (B)] ;
- (b) The name of the officer to act as prosecutor should be stated on the application ;
- (c) The convening officer must be informed whether or not the accused desires to have a defending officer assigned to represent him at the trial ;
- (d) The information required as to officers who have investigated the case : or sat on a court of inquiry, must be given with great care ;
- (e) The charge-sheet must be signed by the officer in actual command of the unit to which the accused belongs, and should state the place and date of signature ;
- (f) Sufficient space should be left at the foot of the charge-sheet for the orders of the convening officer, or officer sanctioning trial under I. A. A. 74, to be entered. The place and date should be entered by the officer signing such orders ;
- (g) The section of the Act under which each charge is framed should be entered in the margin (in red ink), opposite the charge to which it refers ;
- (h) When it is intended to prove any facts in respect of which any deduction from the pay and allowances (*i.e.*, stoppages) of the accused can be awarded in consequence of the offence charged, those facts must be clearly shown in the particulars of the charge and the sum of the loss or damage it is intended to charge [see para. 2 (g) above] ;
- (i) I. A. F. D.-905, by whomsoever produced, is to be signed by the officer having the custody of the books from which it is compiled ; custody includes temporary custody for the purpose of the trial. In preparing this form, minor offences may be grouped as "miscellaneous" ; offences of the same class as that being charged should be shown in a separate group.

8. After trial has been ordered the commanding officer should satisfy himself that the following provisions are complied with :—

- (a) The accused must be warned for trial not less than 24 hours before the court assembles, must be informed by an officer of every charge on which he is to be tried, must be given a copy

## INDIAN ARMY ACT RULES

of the charge-sheet and a vernacular translation of the same and of the summary (or abstract) of evidence, and notice of the intention to call witnesses whose evidence is not contained in the summary (or abstract) and an abstract of their evidence, and (if he desires it) must be informed of the ranks, names and units of the officers who are to form the court as well as of any waiting members (Rule 23);

- (b) The accused must be informed that on his giving the names of any witnesses for the defence, reasonable steps will be taken to procure their attendance :
- (c) The accused must be afforded proper opportunity for preparing his defence :
- (d) The commanding officer must not detail as a member of the court an officer who is ineligible or disqualified to serve under the provisions of Rule 29:
- (e) The accused must be seen by a medical officer on the morning of each day the court is sitting for his trial and the medical officer's report should be produced to the court immediately after it opens :
- (f) In a case of a joint trial, the accused persons should be informed of the intention to try them together and of their right to claim separate trials if the nature of the charge admits of it.

9. After confirmation (or refusal thereof), the commanding officer must see that the following provisions are complied with:—

- (a) The proceedings must be promulgated as laid down in R. A. I.
- (b) The record of the promulgation must be entered on the proceedings in form shown on p. 393, and, if the proceedings have been confirmed, extracts recorded in the regimental books;
- (c) After promulgation the proceedings must be forwarded without delay to the proper authority.

*Convening officer.*

10. The convening officer should satisfy himself as regards the matters mentioned in para. 6 and para. 7 (above); and in addition he will ensure :—

- (a) In all cases for trial by general court-martial, and in all cases of indecency, fraud, theft (except ordinary theft), and civil offences; and in all other cases which present doubt or difficulty, that the charge sheet and summary or abstract of evidence are submitted to the Deputy or Assistant Judge-Advocate-General concerned before trial is ordered (see R. A. I.);
- (b) That he holds the necessary court-martial warrant empowering him to convene the description of court-martial that he considers appropriate :

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(c) That the court which he has decided to convene is properly composed in accordance with the Indian Army Act; see also Rule 30—any opinion of the convening officer with respect to the composition of the court under this rule should be stated in the convening order;

(d) That no officer is detailed to serve on the court who is ineligible or disqualified under Rule 29;

*Note.*—In the case of theft from an officers' mess, all the officers of that mess are regarded as interested, and are therefore disqualified.

(e) That application is made to the Deputy or Assistant Judge-Advocate-General concerned for the services of a Judge-Advocate when the appointment of a Judge-Advocate is legally required or is desirable (see I. A. A. 78 and notes);

(f) That the officers detailed to serve are stated in the convening order either by name or by the units from which they are to be drawn;

(g) That in trials by general court-martial, and in complicated cases a prosecutor is specially selected for his experience and knowledge of military law (see note to Rule 33);

(h) That the order for trial at the foot of the charge-sheet is signed by him, or by an officer of his staff signing "for" him;

(i) That the convening order is signed by him, or by an officer of his staff authorised by usage of the service to sign his orders.

11. Where the convening officer, or the senior officer, on the spot considers that military exigencies or the necessities of discipline render it impossible or inexpedient to observe any of the Rules referred to in Rule 25, he must make on I. A. F. D-920 a declaration to that effect specifying the nature of those exigencies or necessities.

12. The convening officer must ascertain whether the accused desires to have a defending officer assigned to assist him at his trial; and, if so, must endeavour to meet his wishes. Should no suitable officer be available, the convening officer must notify the president in writing [see Rule 81 (B)].

13. The convening officer must send to the senior member of the court martial the convening order, charge-sheet and summary (or abstract) of evidence. Except in the case of a joint trial of two or more persons a separate copy of the convening order should be supplied in respect of every person to be tried.

#### *General.*

14. The original Convening order must be before the court, and the president must satisfy himself that the court is duly constituted according to its terms.

The court must not make any alteration or correction in the convening order, nor, save as allowed by Rule 40 (A), in the charge-sheet.

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15. In any case of doubt as to the constitution of the court, or any other matter affecting jurisdiction or validity of the charges, the president should consult the convening officer before the court assembles, or if the court has assembled, before proceeding with the trial.

16. When, in accordance with Rule 75, the court is sworn at one time in the presence of several accused persons who are to be tried separately in succession, the time at which the convening order is read should be recorded on page "A" of each I. A. F. D-906, as the time at which the trial of each of the accused commences. In such cases it is desirable that the time of arraignment of each such accused should be inserted on page "B" of each I. A. F. D-906 before the words : "The accused is arraigned", etc.

17. The full name and description of the accused should be entered on the first page of the proceedings.

18. Care should be taken that, whenever a court of inquiry has been held, the relevant certificate (on the first page of the proceedings) is properly completed (see p. 378 for form).

19. Any person addressing the court, or examining or cross-examining a witness, should always do so standing.

20. Every witness, including the officer producing I. A. F. D-905, must be sworn or affirmed in the presence of the accused to whom his evidence refers ; he must not be examined on a former oath taken in the presence of another accused person.

The prosecutor or other person producing documents must be sworn. By the custom of courts-martial, however, the accused is allowed to hand in letters and certificates of character purporting to be in the handwriting of absent officers or former employers, and unless there is reason to doubt their authenticity, they may be accepted.

21. The evidence will usually be taken down in narrative form. Questions and answers recorded *verbatim* will be numbered consecutively ("Q1", "A.1", etc.) throughout.

22. When original documents are not retained by the court and copies are attached to the proceedings, it must be stated in the proceedings that the copies have been compared with the originals and found to be correct. As a rule, it is preferable to attach copies, and not original documents, to the proceedings (see note to Rule 56).

23. In accepting I. A. Forms D-905, D-918, D-910 and certified copies of records in regimental books, attention should be given to paras. 7(i), 2(d), 2(e), 2(b) *ante*. Where these documents are given in evidence it is sufficient to record upon the proceedings the mere fact of their production without setting out the facts which they purport to prove; but the record of the evidence should always show that a witness identified the accused as the person to whom the particular document relates.

24. A certified true copy of a record in a regimental book (e.g., on I. A. F. D-918 of an entry in the court-martial book) is sufficient evidence thereof ; it is not necessary for the court to compare the copy with the regimental book.



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25. Where the value of arms, ammunition, equipment, or public clothing lost or damaged is proved, the accused, if convicted, should be sentenced to be put under stoppages, notwithstanding the fact that he may also be sentenced to be dismissed from the service, in case the latter part of the sentence should be remitted.

26. Arrears of pay and allowances forfeited by sentence of court-martial under I. A. A. 43(h) (iii) cannot be applied as compensation for loss or damage. If, therefore, loss or damage has been averred and proved, stoppages should be awarded, even if the accused is also sentenced to forfeiture of arrears, so that compensation may first be paid and any balance remaining over forfeited.

27. Included in I. A. F. D-906 are two sets of pages "C" and "D"—one for proceedings on a plea of "Not guilty" and one for proceedings on a plea of "Guilty". Where the pleas recorded are all "Not guilty", or all "Guilty", the set pertaining to the plea or pleas recorded is alone to be used, and the unused set should be removed from the proceedings.

When some of the pleas are "Not guilty" and some "Guilty", both sets will be used, the court proceeding first on the plea or pleas of "Not guilty" upto and including the findings, and then on the plea or pleas of "Guilty". It is not necessary to insert before page "D" a separate sheet containing the findings of the court upon the plea or pleas of "Not guilty".

28. Where two or more persons are charged and tried jointly on a charge-sheet, only one set of proceedings should normally be used, the relevant pages of I. A. F. D-906 being adapted accordingly, and the replies of each of the accused to the questions set out therein being separately recorded. A separate sheet, however, should be used for the finding and proceedings on conviction, and for the sentences, in each case.

29. Where trial proceeds on more than one charge-sheet, all printed matter on page "A" and the two printed lines at the top of page "B" should be struck out in the case of the second or any subsequent charge-sheet, the word "second", "third" (or as the case may be) being inserted before the word "charge-sheet" on page "B".

30. The charge-sheet is to be inserted in the proceedings after page "B"; all other documents are to be attached at the end of the proceedings in the order of their production to the Court.

31. Every document attached to the proceedings should be signed by the president (*or* judge-advocate) and marked with a reference letter, preferably not one used in I. A. F. D-906.

32. In case of a plea of "Guilty", the summary of evidence is to be annexed to the proceedings. In case of a plea of "Not guilty" it will be annexed if it or any part of it has been put in evidence at the trial. In other cases the summary will merely be enclosed with the proceedings when sent to the confirming officer.

33. All erasures of written or printed matter, and all interlineations and corrections should be initialled by the president or judge-advocate, see note (A) 1 to r. 78.

## INDIAN ARMY ACT RULES

34. Pages should be numbered consecutively up to the end of the proceedings after they have been put together in the order prescribed. In case of revision, the later proceedings are added at the end, and the numbering of pages carried on.

35. Care must be taken that the proceedings are both signed and dated by the president.

*Duties of Prosecutor*

36. For the general duties of a prosecutor, see Rule 66 (A) and notes.

## 37. (a) Duties before trial :—

The prosecutor should have previous knowledge of the subject-matter of the charge or charges. For that reason the officer detailed as prosecutor must make it his business to acquaint himself with the circumstances, and assure himself that the various rules relating to procedure before trial have been complied with (see note to Rule 33). He will, as a rule, be the officer who recorded the summary of evidence.

The Court will look to him for an explanation of any defect or omission apparent or alleged by the accused.

## (b) On being detailed for duty he should --

- (i) Obtain a copy of the charge-sheet and summary of evidence, and enquire whether there is any correspondence or other material relative to the case, which he should peruse and note.
- (ii) If he thinks there is any legal defect, irregularity, or serious omission in either the charge-sheet or the summary of evidence, he should refer to the commanding officer of the accused's unit. The ability to detect irregularities connotes a working knowledge of the Rules under the Act, and of the laws of evidence.
- (iii) Satisfy himself that Rules 22, 23, and in the case of joint trial Rule 24, have been complied with.
- (iv) Satisfy himself that proper steps are being taken to secure the attendance of all necessary witnesses.
- (v) Obtain or prepare a record of the accused's service (I. A. F. D.-1905) for production at the trial if required. This form must be signed by the officer having the custody of the regimental books.
- (vi) Consider whether an opening address is desirable, or is likely to be required from him by the court [Rule 46 (A)]. If so, prepare such an opening address, setting out in the form of a narrative the facts which are alleged against the accused, and the nature of the evidence by which those facts are to be proved. The opening address must be as impartial as he can make it free from unnecessary comment, denunciation or prejudice. There must be no reference in it to any allegation which is not to be proved in evidence subsequently at the trial. An opening address is not ordinarily

## INDIAN ARMY ACT RULES

required in disciplinary cases of a simple character, but is valuable where accounts are involved, or the evidence is largely circumstantial.

- (vii) On the morning of the trial take with him to the court a certificate by a medical officer stating that he has examined the accused on that morning, and that he is fit for trial.
- (viii) Assure himself that all witnesses and necessary exhibits are present.

38. Duties at the trial :—

- (a) On the opening of the Court the prosecutor presents the medical certificate to the president.
- (b) If any material witness is absent, the prosecutor should inform the court at once, and if necessary apply for an adjournment (Rule 124).
- (c) If a court of inquiry has been held respecting a matter upon which a charge against the accused is founded, the prosecutor should hand to the court a list of the names of the officers who sat on the court of inquiry. The written record of the proceedings of such court of inquiry must not be laid before the court-martial [see Rule 31(A)].
- (d) As to the prosecutor's right to address the court and call witnesses in reply in the event of a special plea or plea in bar of trial, see Rules 39, 41 and 43.
- (e) Where the accused pleads "Guilty", the duties of the prosecutor are confined to calling such witnesses as may be necessary if the summary be insufficient [Rule 44 (B)], and producing I. A. F. D.-905.

*Note.*—If the accused in a statement in mitigation says something which is inconsistent with his plea, the prosecutor should call the attention of the court to Rule 44 (D), and prepare to call his witnesses as on a plea of "Not guilty".

- (f) Where the accused pleads "Not guilty", the prosecutor makes his opening address, if any, and if it is in writing hands it in, and calls his first witness.
- (g) Before calling his witnesses, and as the case proceeds, the prosecutor must consider whether he should call all those whose evidence is in the summary or abstract of evidence, and whether it is his duty to call as a witness any person whose evidence is not contained in summary (Rules 120, 121).
- (h) As to accomplices as witnesses for the prosecution, see para. 4 *ante*.
- (i) After a witness for the prosecution has been sworn or affirmed, the prosecutor will ascertain the witness's number, rank, name, unit, station, address, occupation, etc., as may be material and will elicit from the witness the relevant facts to which the witness can speak. This may be done by means of questions of a non-leading character (see Pt. I, Ch. V, paras. 102-106),

## INDIAN ARMY ACT RULES

or by permitting the witness to tell his own story, questions being subsequently asked to make good any omissions. A series of short simple questions will generally assist the witness to recount facts in chronological order, and the president or judge-advocate in making the record.

- (j) The rules which govern cross-examination are described in Pt. I, Ch. V, paras. 107-113. The limits within which re-examination is permitted are set out in para. 116. It may happen that a question in cross-examination has been so framed as to compel the witness to answer simply "Yes" or "No", whereas there is within the prosecutor's knowledge an explanation which should in fairness be made. In such a case the prosecutor may in re-examination refer the witness to that question and answer, and ask him if he has anything to add or explain.

The prosecutor should not dismiss a witness until he has ascertained whether the court desire to question him and until Rule 127 (B) (C) (D) has been complied with.

- (k) The prosecutor must take care that each exhibit which he desires to put before the court is produced and identified by one of his witnesses. If an exhibit (*e.g.*, the property alleged to have been stolen) is to be referred to by more than one witness, each witness who refers to it must be invited to look at the exhibit, and say whether he identifies it. If the prosecutor is himself producing documents he should do so, after being sworn as a witness, before he calls his other witnesses [Rule 46(C) and note]. Neither the prosecutor nor a witness may refer to the contents of a document which is not before the court, unless evidence is given accounting for its absence (see Pt. I, Ch. V, paras. 76-77).
- (l) The prosecutor having called his witnesses, the case for the prosecution is closed. The subsequent procedure depends upon the exercise by the accused of his rights, and is fully set out in Rules 47 and 48.
- (m) If the accused calls any witnesses to the facts, it is the duty of the prosecutor to assist the court to test the value of their evidence by cross-examination. The result of omission to cross-examine is frequently that the evidence for the defence stands unchallenged, and the prosecutor cannot properly, in a subsequent address, characterise as untrue a defence which he has not attempted, by question to the witnesses at the proper time, to impugn. Cross-examination is not limited to the matters dealt with in the examination-in-chief. It must however, be confined to matters relevant, directly or indirectly, to the issue. Leading question may be asked in cross-examination, but not questions which assume that facts have been given in evidence which have not been given (see Pt. I, Ch. V, para. 109). As to injurious questions see para. 110. As to calling witnesses in reply to the defence, see Rule 129 and notes.
- (n) The desirability of making a closing address at the appropriate time, as provided in Rules 47 and 48, is a matter for the prosecutor's discretion. If there is any evidence or argument

## INDIAN ARMY ACT RULES

put forward by the defence which he thinks might seriously mislead the court, he should comment on it. He is entitled to sum up the evidence generally and to point out any weakness in the defence, and to suggest the inferences which the court may draw from the facts proved, but he must state nothing as a fact which has not been proved in evidence (see note to Rule 96).

- (o) If the accused is convicted on any charge, the prosecutor, or some other person in a position to do so, is sworn (if he has not already been sworn as a witness in the case) and produces evidence (I. A. F. D-905) of the character, age, service, rank, etc., of the accused (see Rule 53 and notes).

*Duties of Defending Officer.*

39. Duties before trial:—

- (a) The defending officer, like the prosecutor, requires a working knowledge of the Rules under the Act, and of the laws of evidence. He must also make himself acquainted with the details of the case.
- (b) The proper preparation of the defence (note to Rule 81) includes:—
- (i) Study of the charge-sheet and summary of evidence and consideration of legal points which he may raise, or which may arise upon them, *e.g.*, objection to a charge, plea to the jurisdiction, plea in bar of trial, admissibility of a confession or of other evidence.
  - (ii) Ascertaining from the accused what is his answer, if any, to each charge.
  - (iii) Communication with possible witnesses for the defence, to ascertain if they are able to give evidence in support of the accused's case, and the taking of appropriate steps to secure their attendance at the trial [Rule 23 (A) and note and Rule 122].

*Note.*—He is not entitled to interview witnesses for the prosecution without special authority.

- (c) The defending officer must bear in mind that the ultimate responsibility for the decision on the plea which is to be offered on each charge must rest upon the accused himself. He may properly advise on this point, but should put no pressure on the accused, except to dissuade him from pleading guilty, where he appears to have an answer, however slight, to the charge. The defending officer's duty at the trial will be to present the accused's defence in the best possible light. He may properly prepare arguments on fact or law, which his own reason or ingenuity may suggest, but it would be improper for him to advise or suggest to the accused an account of the facts, other than that which the accused himself desires to give.
- (d) The defending officer is not called upon to judge the truth or otherwise of the accused's defence, nor is he permitted to



## INDIAN ARMY ACT RULES

express his own opinion or belief (Rule 86). To avoid, however, giving countenance to a line of defence which is incompatible with his duty as an officer, he should apply through his commanding officer to the convening officer for permission to withdraw from the case.

40. Duties at the trial:—

- (a) Having the rights, duties, and obligations of counsel, the defending officer must himself conduct the case as representing the accused, *i.e.*, he will himself cross-examine witnesses for the defence, take any objections, make any submissions, and address the court on the accused's behalf.
  - (b) The defending officer has the right to make an application for adjournment [see Rule 23 (D)], and to address the court in support of it. It should not be made on the ground of a technical irregularity or omission, merely as a protest, where no benefit can accrue to the presentation of the defence from the postponement of the trial.
  - (c) It is the defending officer's duty to question each witness for the prosecution on any matter which is to be alleged in defence in so far as this matter is or should be within the witness's knowledge (see Pt. I, Ch. V, paras. 107-113). As to injurious questions, see para. 110.
  - (d) The defending officer may take objection to any question put by the prosecutor to a witness for the prosecution on one of the following grounds; the objection should be made if possible before the witness answers [Rule 127 (A)] :—
    - (i) That it is a leading question.
    - (ii) That it invites hearsay, or an account of an involuntary confession, or evidence of the accused's bad character when that character has not been put in issue, etc. (Pt. I, Ch. V, para. 60).
  - (e) At the close of the case for the prosecution, the defending officer may submit that the accused has no case to answer, and therefore should not be called upon for his defence, because the prosecution have not produced evidence in support of one or more essentials in the charge (Note 1 to Rule 47. Note to Rule 74).
- Note.*—This submission must be to the effect that there is no evidence at all on the point or points, and not that the evidence is untrust-worthy.
- (f) Where a witness not on the summary of evidence is called by the prosecutor, the defending officer may apply for an adjournment, or postponement of cross-examination (Rule 121).
  - (g) The defending officer is entitled to consult the judge-advocate, if one has been appointed, on any question of law or procedure relative to the charge or trial [Rule 91 (A)].
  - (h) The defending officer must throughout the proceedings treat the court with respect and candour.

## FOURTH APPENDIX.

### WARRANTS UNDER SECTIONS 107 AND 109 OF THE INDIAN ARMY ACT.

#### FORM A.

*Warrant of commitment for use when a prisoner is sentenced to transportation (Indian Army Act, Section 107).* I.A.F.D. 911-A.

*To the Superintendent*

*of the (a) Prison.*

Whereas at a (b) Court-martial, held at  
on the day of , 19 , (Number,  
Rank, Name) of the Regiment  
was convicted of (the offence to be briefly stated here, as "desertion",  
"corresponding with the enemy", "disobedience of lawful command" or  
as the case may be).

And whereas the said (b) Court-martial on the  
day of , 19 , passed the following sentence  
upon the said (Name) ; that is to say :—

*(Sentence to be entered in full, but without signature.)*

And whereas the said sentence has been duly confirmed by (c) as  
required by law. (d).

This is to require and authorise you to receive the said (Name)  
into your custody in the said prison as by law is required, together  
with this warrant, until he shall be delivered over by you with the  
said warrant to the proper authority and custody for the purpose of  
undergoing the aforesaid sentence of transportation. The aforesaid  
sentence has effect from the (e) .

Given under my hand at this the day of  
, 19 .

Signature (f)

- (a) Enter name of civil prison.
- (b) General, or Summary General.
- (c) Name and description of confirming authority.
- (d) Add if necessary "with a remission of ".
- (e) Enter date on which the original sentence was signed.
- (f) Signature of Commanding Officer of prisoner or other prescribed officer.

See Rule 152.

## INDIAN ARMY ACT RULES

## FORM B.

*Warrant of commitment for use when a prisoner is sentenced to imprisonment which is to be undergone in a civil prison [Indian Army Act, section 107(2)]* I.A.F.D. 911-B.

To the Superintendent

of the (a) Prison.  
Whereas at a (b) Court-martial, held at  
on the day of , 19 , (Number,  
Rank, Name) of the Regiment  
was duly convicted of (the offence to be briefly stated here, as "deser-  
tion", "theft", "receiving stolen goods", "fraud", "disobedience of law-  
ful command" or as the case may be).

And whereas the said (b) Court-martial on the  
day of , 19 , passed the following sentence  
upon the said (Name) ; that is to say :—

*(Sentence to be entered in full, but without signature.)*

And whereas the said sentence  
has been duly confirmed by (d) as required by law (e).

(c) is by law valid without confirmation.

This is to require and authorise you to receive the said (Name)  
into your custody together with the warrant, and there carry the afore-  
said sentence of imprisonment into execution according to law. The  
sentence has effect from the (f)

Given under my hand at this the day of  
, 19 .

Signature (g).

- (a) Enter name of civil prison.
- (b) General, District, Summary General or Summary.
- (c) Strike out inapplicable words.
- (d) Name and description of confirming authority.
- (e) Add if necessary "with a remission of ".
- (f) Enter date on which the *original* sentence was signed.
- (g) Signature of Commanding Officer of prisoner or other prescrib-  
ed officer. See Rule 152.

## INDIAN ARMY ACT RULES

## FORM BB.

*Warrant of commitment for use when a prisoner is sentenced to imprisonment which is to be undergone in a prison [Indian Army Act, section 107 (2)]*

To

The Commandant.

of the Indian Military Prison at

Whereas at (a) Court-Martial held at  
on the day of 19 ,  
(Number, Rank, Name) of the  
Regiment was duly convicted of (the offence to be briefly  
stated here, as "desertion", "theft", "receiving stolen goods", "fraud",  
"dis-obedience of lawful command" or as the case may be)

And whereas the said (a) Court-Martial, on  
the day of 19 , passed the  
following sentence upon the said (Name)  
that is to say :—

*(Sentence to be entered in full, but without signature).*

And whereas the said sentence has been duly confirmed by (b)

\*as required by law (c)

\*is by law valid without confirmation.

This is to require and authorise you to receive the said (Name)  
into your custody together with this warrant, and there carry the  
aforesaid sentence of imprisonment into execution according to law.  
The sentence has effect from (d).

Given under my hand at this the  
day of 19 .  
Signature (e).

\*Strike out inapplicable words.

(a) General, District, Summary General or Summary.

(b) Name and description of confirming authority.

(c) Add if necessary "with remission of ".

(d) Enter date on which the original sentence was signed.

(e) Signature of Commanding Officer of prisoner or other prescribed Officer. See Rule 152.

## INDIAN ARMY ACT RULES

## FORM C.

*Warrant for use when a prisoner is pardoned or his trial set aside, or I.A.F.D. when the whole sentence, or the unexpired portion thereof, is II-C. remitted (Indian Army Act section 109).*

To the Superintendent/Commandant  
of the (a) Prison.

Whereas (Number, Rank, Name) (late) of the  
Regiment is confined in the (a) prison  
under a warrant issued by (b) in pur-  
suance of a sentence of (c) passed upon  
him by a (d) Court-Martial held at  
on ; and whereas (e) has,  
in the exercise of the powers conferred upon him by the Indian Army  
Act, passed the following order regarding the aforesaid sentence; that  
is to say:—

(f) \_\_\_\_\_

This is to require and authorise you to forthwith discharge the  
said (Name) from your custody unless he is liable to be detained for  
some other cause ; and for your so discharging him this shall be your  
sufficient warrant

Given under my hand at this the day of  
, 19 .

Signature (g)

- (a) Enter name of civil or military prison.
- (b) Enter name or designation of officer who signed original war-  
rant.
- (c) Enter original sentence (if this was reduced by the Confirming  
Officer or other superior authority the sentence should be  
entered thus :  
“2 years’ rigorous imprisonment reduced by Confirming Officer  
to 1 year”).
- (d) General, District, Summary General or Summary.
- (e) Name and designation of authority pardoning prisoner, mitigat-  
ing sentence or setting aside trial.
- (f) Order to be set out in full.
- (g) Signature of prescribed officer. See Rule 153.



## INDIAN ARMY ACT RULES

## FORM D.

I.A.F.D.  
911-D.

*Warrant for use when a sentence of transportation is reduced by superior authority to one of a shorter period of the same (Indian Army Act, section 109).*

*To the Superintendent  
of the (a) Prison*

Whereas (Number, Rank, Name) (late) of the \_\_\_\_\_ Regiment is confined in the (a) \_\_\_\_\_ prison under a warrant issued by (b) \_\_\_\_\_ in pursuance of a sentence of (c) \_\_\_\_\_ passed upon him by a (d) \_\_\_\_\_ Court-Martial held at \_\_\_\_\_ on \_\_\_\_\_, and whereas (e) \_\_\_\_\_ has, in the exercise of the powers conferred upon him by the Indian Army Act, passed the following order regarding the aforesaid sentence : that is to say :—  
(f) \_\_\_\_\_

This is to require and authorise you to keep the said (Name) in your custody together with this warrant, in the said prison as by law is required until he shall be delivered over by you with the said warrant to the proper authority and custody for the purpose of his undergoing the punishment of transportation, under the said order. And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof this warrant is issued. The period of such transportation will reckon from the (g).

Given under my hand at \_\_\_\_\_ this the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Signature (h)

- (a) Enter name of civil prison.
- (b) Enter name or designation of officer who signed original warrant.
- (c) Enter original sentence (if this was reduced by the Confirming Officer or other superior authority the sentence should be entered thus :—  
“2 years’ rigorous imprisonment reduced by Confirming Officer to 1 year”).
- (d) General or Summary General.
- (e) Name and designation of authority varying the sentence.
- (f) Order to be set out in full.
- (g) Enter date on which *original* sentence was signed.
- (h) Signature of prescribed officer. See Rule 153.

## INDIAN ARMY ACT RULES

## FORM E

I.A.F.D.—  
911-E.

*Warrant for use when a sentence of imprisonment is reduced by superior authority or when one of transportation is reduced to one of imprisonment*

(Indian Army Act, Section 109)

To the Superintendent/Commandant.  
of the (a) Prison.

Whereas (Number, Rank, Name) (late) of the Regiment is confined in the (a) prison under a warrant issued by (b) in pursuance of a sentence of (c)

passed upon him by a (d) Court-Martial held at on , and whereas (e) has in the exercise of the powers conferred upon him by the Indian Army Act, passed the following order regarding the aforesaid sentence; that is to say :

(f) ————

This is to require and authorise you to keep the said (Name) in your custody together with this warrant, and these to carry into execution the punishment of imprisonment under the said order according to law. And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof this warrant is issued. The period of such imprisonment will reckon from the (g)

Given under my hand at this the day of , 19 .

Signature (h)

- (a) Enter name of civil or military prison.
- (b) Enter name or designation of officer who signed original warrant.
- (c) Enter original sentence (if this was reduced by the Confirming Officer or other superior authority the sentence should be entered thus:  
"2 years' imprisonment reduced by Confirming Officer to 1 year").
- (d) General, District, Summary General or Summary.
- (e) Name and designation of authority varying the sentence.
- (f) Order to be set out in full.
- (g) Enter date on which *original* sentence was signed.
- (h) Signature of prescribed officer. See Rule 153.

## INDIAN ARMY ACT RULES

## FORM F

*Warrant for use when prisoner is to be delivered into military custody* I.A.F.D.—  
*(Indian Army Act, section 109)* 911-F

*To the Superintendent/Commandant  
 of the (a) Prison.*

Whereas (Number, Rank, Name) (late) of the  
 Regiment is confined in the (a) prison under  
 a warrant issued by (b) in pursuance of a sen-  
 tence of (c) passed upon him by a (d)  
 Court-Martial held at on ; and  
 whereas (e) has in the exercise of the powers con-  
 ferred upon him by the Indian Army Act passed the following order  
 regarding the aforesaid sentence; that is to say : —  
 (f)\_\_\_\_\_

This is to require and authorise you to forthwith deliver the said  
 (Name) to the officer or non-commissioned officer bringing this warrant.

Given under my hand at this the day of  
 , 19 .

Signature (g)

- 
- (a) Enter name of civil or military prison.  
 (b) Enter name or designation of officer who signed original war-  
 rant.  
 (c) Enter original sentence (if this was reduced by the Confirming  
 Officer or other superior authority the sentence should be en-  
 tered thus :—  
 “2 years’ rigorous imprisonment reduced by Confirming Officer  
 to 1 year”).  
 (d) General, District, Summary General or Summary.  
 (e) Name and designation of authority issuing order.  
 (f) Order to be set out in full.  
 (g) Signature of prescribed officer. See Rule 153.

## FIFTH APPENDIX

### FORM G

1. A.F.D.—  
11-G

*Warrant committing to civil prison custody a person sentenced  
to death*

*(Indian Army Act Rule, 154A)*

To the Superintendent of the (a) ..... Prison.

WHEREAS at a (b) ..... Court-Martial held at ..... on  
the ..... day of ..... 19 ..... (number,  
rank and name) of the ..... Regiment was convicted of  
..... (offence to be briefly stated);

And whereas the said (b) ..... Court-Martial, on  
the ..... day of ..... 19 ....., passed sentence  
of death on the said ..... (name);

And whereas the said sentence has been confirmed by (c).....  
as required by law;

This is to require and authorise you to receive and hold the said  
..... (name) into your custody in the said prison as by  
law is required, together with his warrant, until such time as a further  
warrant in respect of the said ..... (name) shall be issued to  
you.

Given under my hand at ..... this the ..... day of  
..... 19 .....

Signature (d)

.....  
(a) Enter name of civil prison.

(b) General or Summary General.

(c) Name and description of confirming authority.

(d) Signature of Commanding Officer of prisoner.

## INDIAN ARMY ACT RULES

## FORM H

*Warrant to obtain person sentenced to death from civil prison custody in order to carry out such sentence* **L.A.F.D. 911-H**

*(Indian Army Act Rule, 154B)*

To the Superintendent of the (a) ..... Prison.

WHEREAS ..... (number, rank and name) (late) of the ..... Regiment, having been sentenced to suffer death on the ..... day of ..... 19 ..... by a (b) ..... Court-Martial held at ..... is held in the said prison under a warrant issued by (c) .....

And whereas, the said sentence having been duly confirmed by (d) ..... as by law required, an order to carry out the said sentence has been issued to me (e) ..... (name and rank) ;

This is to require and authorise you to deliver forthwith the said ..... (name) to the officer/non-commissioned officer bringing this warrant.

Given under my hand at ..... this the ..... day of ..... 19.....

Signature (f)

(a) Enter name of civil prison.

(b) General or Summary General.

(c) Enter name or designation of officer who signed original warrant.

(d) Name and description of confirming authority.

(e) Name and designation of the officer to whom the order is issued.

(f) Signature of the officer to whom the order is issued.



## INDIAN ARMY ACT RULES

## FORM 1

I.A.F.D.— *Warrant for use when the sentence of a person under sentence of death  
911-I. and committed to custody in a civil prison is commuted to a  
sentence of transportation*

(Indian Army Act Rule, 154C)

To the Superintendent of the (a) .....Prison.

WHEREAS ..... (number, rank and name) (late) of the  
..... Regiment, is held in the (a) ..... prison  
under a warrant issued by (b) ..... in pursuance of a sentence  
of death passed upon him by (c) ..... Court-Martial held at  
..... on ....., and whereas (d) ..... has, in exercise  
of the powers conferred upon him by the Indian Army Act, passed  
the following order regarding the aforesaid sentence, that is to say :—  
(e).....

This is to require and authorise you to keep the said .....  
(name) in your custody together with this warrant in the said prison  
as by law is required until he shall be delivered over by you with  
the said warrant to the proper authority and custody for the purpose  
of his undergoing the punishment of transportation, under the said  
order ; And this is further to require and authorise you to return to  
me the original warrant of commitment in lieu whereof this warrant  
is issued. The period of such transportation will reckon from the  
(f) .....

Given under my hand at .... this the .....day of  
..... 19.....

Signature (g)

- (a) Enter name of civil prison.
- (b) Enter name or designation of officer who signed original war-  
rant.
- (c) General or Summary General.
- (d) Name and designation of authority commuting the sentence.
- (e) Order to be set out in full.
- (f) Enter date on which original sentence was signed.
- (g) Signature of Commanding Officer.

## INDIAN ARMY ACT RULES

## FORM J

*Warrant for use when the sentence of a person under sentence of death and committed to custody in a civil prison, is commuted to a sentence of imprisonment to be served in the same prison.* I.A.F.D. 911-J.

*(Indian Army Act Rules, 154C)*

To the Superintendent of the (a).....Prison.

WHEREAS ..... (number, rank, name) (late) of the ..... Regiment is held in the (a) ..... prison under a warrant issued by (b) ..... in pursuance of a sentence of death passed upon him by a (c).....Court-Martial held at..... on ..... and whereas (d) ..... has in the exercise of the powers conferred upon him by the Indian Army Act, passed the following order regarding the aforesaid sentence; that is to say: — (e) .....

This is to require and authorise you to keep the said ..... (name) in your custody together with this warrant, and there to carry into execution the punishment of imprisonment under the said order according to law. And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof this warrant is issued. The period of such imprisonment will reckon from the (f) .....

Given under my hand at ..... this the ..... day of ..... 19 .....

Signature (g)

- 
- (a) Enter name of civil prison.
  - (b) Enter name or designation of officer who signed original warrant.
  - (c) General or Summary General.
  - (d) Name and designation of authority commuting the sentence.
  - (e) Order to be set out in full.
  - (f) Enter date on which original sentence was signed.
  - (g) Signature of Commanding Officer.

## INDIAN ARMY ACT RULES

## FORM K

**I.A.F.D.—** *Warrant for use when a person who, after having been sentenced to*  
**911-K.** *death, has been committed to custody in a civil prison is to be deli-*  
*vered into military custody for a purpose other than carrying out*  
*the sentence of death.*

*(Indian Army Act Rules, 154C)*

To the Superintendent of the (a) ..... Prison.

WHEREAS ..... (number, rank, name) (late) of  
 ..... Regiment is held in the (a) ..... prison under  
 a warrant issued by (b) ..... in pursuance of a sentence of death  
 passed upon him by (c) ..... Court-  
 Martial held at ..... on ..... and  
 whereas (d) ..... has in the exercise of the powers conferred  
 upon him by the Indian Army Act passed the following order regarding  
 the aforesaid sentence : that is to say :—(e).....

This is to require and authorise you to forthwith deliver the said  
 ..... (name) to the officer or non-commissioned officer  
 bringing this warrant.

Given under my hand at ..... this the .....  
 day of ..... 19.....

Signature (f)

- 
- (a) Enter name of civil prison.
  - (b) Enter name or designation of officer who signed original war-  
rant.
  - (c) General or Summary General.
  - (d) Name and designation of authority issuing order.
  - (e) Order to be set out in full.
  - (f) Signature of Commanding Officer.

ACT NO. IV OF 1917.

[PASSED BY THE INDIAN LEGISLATIVE COUNCIL.]

(Received the assent of the Governor General on the 28th February, 1917.)

An Act to authorise the suspension of certain sentences passed by Courts-martial under the Indian Army Act, 1911, and for other purposes.

VIII of 1911. **W**HEREAS it is expedient to authorise the suspension of sentences of imprisonment or transportation passed during the present war on persons subject to the Indian Army Act, 1911, and to make provision for other matters connected therewith; It is hereby enacted as follows :—

1. (1) This Act may be called the Indian Army <sup>Short title, construction and duration.</sup> (Suspension of Sentences) Act, 1917, and shall be construed as one with the principal Act.

(2) It shall remain in force during the continuance of the present war, and for a period of six months thereafter.

2. In this Act, unless there is anything repugnant <sup>Definitions.</sup> in the subject or context,—

(1) “committed” includes committal to prison and confinement in military custody, and “imprisonment” includes such confinement;

(2) “competent military authority” means a superior military authority, or any general or other officer not below the rank of field officer duly authorised by a superior military authority;

(3) “principal

- (3) "principal Act" means the Indian Army VIII of 1911, Act, 1911;
- (4) "sentence" means a sentence of transportation or imprisonment, whether originally passed on a person subject to the principal Act, or passed by way of reduction or commutation; and "sentenced" has the corresponding meaning;
- (5) "superior military authority" means any of the following, namely:—the Commander-in-Chief in India or the Officer Commanding the Army, Army Corps, Division or independent Brigade in which the offender, at the time of his conviction, was serving, and includes the Officer Commanding-in-Chief of any force employed on active service, or any General Officer Commanding an army comprised in that force.

Suspension of sentences.

3. (1) Where a person subject to the principal Act is sentenced, the confirming officer when confirming the sentence, or, in the case of a sentence which does not require confirmation, the officer holding the trial or the President of the Court-martial when passing sentence may, notwithstanding anything in the principal Act, direct that such person be not committed or dismissed from the service (if liable to such dismissal) until the orders of a superior military authority have been obtained.

(2) A superior military authority may, in the case of any such offender so sentenced,—

(a) direct that such offender shall not be committed until his orders have been obtained;

(b) suspend the sentence whether or not the offender has already been committed.

(3) Where a sentence is suspended under this Act before the offender has been committed, he shall be released if in custody, and, notwithstanding anything in



in the principal Act, the sentence shall not begin to run until the offender is committed under that sentence.

(4) Where a sentence is suspended under this Act after the offender has been committed, he shall be discharged, and the currency of the sentence suspended until he is again committed under the same sentence.

(5) An offender, whose sentence has been suspended under this Act, whether or not the sentence is subsequently remitted, may be required to serve in a corps or department other than that in which he was serving when sentenced.

(6) Where a sentence has been suspended under this Act, the case may at any time, and shall at intervals of not more than three months, be reconsidered by a competent military authority, and if, on any such re-consideration, it appears to the competent military authority that the conduct of the offender since his conviction has been such as to justify a remission of the sentence, he shall remit it.

(7) A superior military authority may, at any time whilst a sentence is suspended under this Act, order that the offender be committed, and thereupon the sentence shall cease to be suspended, and the prisoner, if liable to be dismissed from the service under section 15 of the principal Act, shall be forthwith dismissed from the service.

(8) Where an offender whilst a sentence on him is so suspended is sentenced for any other offence, then, if that sentence is also suspended under this Act, the authority ordering the suspension may direct that the two sentences shall run either concurrently or consecutively, provided that the aggregate term of imprisonment to be served under two or more sentences shall not exceed fourteen consecutive years; and where the sentence for such other offence is a sentence of transportation, then, whether or not that sentence is suspended, any previous sentence of imprisonment which has been suspended shall be avoided,

avoided, in so far as the period of such imprisonment does not exceed that of the transportation.

(9) The powers conferred by this Act shall be in addition to, and not in derogation of, any powers as to the mitigation, remission or commutation of sentences conferred by the principal Act, and a superior military authority shall, as regards persons subject to that Act, be an authority having power to mitigate, remit or commute sentences under section 99 of that Act.

## ACT No. X OF 1917.

[PASSED BY THE INDIAN LEGISLATIVE COUNCIL.]

(Received the assent of the Governor General on the 21st March, 1917.)

### An Act further to amend the Indian Army Act, 1911.

VIII of 1911. **W**HEREAS it is expedient further to amend the Indian Army Act, 1911; It is hereby enacted as follows :—

1. This Act may be called the Indian Army Shorttitle. (Amendment) Act, 1917.

VIII of 1911. 2. In section 52 of the Indian Army Act, 1911 Amendment of section 52 of Act VIII of 1911 (hereinafter referred to as "the said Act"), after the words "in such manner," the words "and to such extent" shall be inserted.

3. After section 52 of the said Act, the following section shall be inserted, namely :—

"52A. (1) In the case of all persons subject to this Act, being prisoners of war, whose pay and allowances have been forfeited under section 50, but in respect of whom a remission has been made under section 52, it shall be lawful, notwithstanding any provision in any enactment or any rule of law to the contrary, for proper provision to be made by the prescribed authorities out of such pay and allowances for any dependants of such persons, and any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances.

(2) Any payments hitherto made to dependants by way of deductions from pay and allowances which, if this section had been in force, could have been validly made are hereby validated."

4. In



Amendment  
of section 76  
of Act VIII  
of 1911.

4. In section 76 of the said Act, in sub-section (1), the words "held by the Commanding Officer of a Corps or department" and sub-section (2), are hereby repealed.

Substitution  
of new section  
for section  
112 of Act  
VIII of 1911.  
Pardons and  
remissions.

5. For section 112 of the said Act, the following section shall be substituted, namely :—

" 112. When any person subject to this Act has been convicted by a Court-martial of any offence, the Governor General in Council or the Commander-in-Chief in India or, in the case of a sentence which he could have confirmed or which did not require confirmation, the Officer Commanding the Army, Division or Independent Brigade in which such person at the time of his conviction was serving, or the prescribed officer may—

- (1) pardon the person;
- (2) mitigate or remit the punishment awarded, or commute such punishment for any less punishment or punishments mentioned in this Act;
- (3) order the restoration to him of any service or other advantage forfeited under his sentence;
- (4) re-admit him to the service when he has been dismissed therefrom.

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the Court."

Amendment  
of section 113  
(2) of Act  
VIII of 1911.

6. In section 113(2) of the said Act, the following sub-head shall be inserted, namely :—

"(ii) the constitution of authorities to decide for what persons, to what amounts and in what manner, provision should be made for dependants under section 52A, and the due carrying out of such decisions."

## ACT No. II OF 1920.

[PASSED BY THE INDIAN LEGISLATIVE COUNCIL.]

*(Received the assent of the Governor General on the 11th February, 1920.)*

## An Act further to amend the Indian Army Act, 1911.

WHEREAS it is expedient further to amend the VIII of 1911. Indian Army Act, 1911; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Indian Army (Amendment) Act, 1920.

Amendment

of section

116, Act VIII

of 1911.

2. In section 116 of the Indian Army Act, 1911, VIII of 1911. after the words "becoming insane" the following shall be added, namely:—

"or, who, being on active service, is officially reported missing:

Provided that, in the case of a person so reported missing, no action shall be taken under sub-sections (2) to (5), inclusive, of the said section, until one year has elapsed from the date of such report."

## ACT No. XXXVII OF 1920.

[PASSED BY THE INDIAN LEGISLATIVE COUNCIL.]

*(Received the assent of the Governor General on the 9th  
September, 1920.)*

An Act further to amend the Indian Army  
Act, 1911.

**W**HEREAS it is expedient further to amend the  
Indian Army Act, 1911; It is hereby enacted VIII of 1911.  
as follows :—

Short title.

1. This Act may be called the Indian Army  
(Amendment) Act, 1920.

Amendment  
of section 20  
of Act VIII  
of 1911.

2. In sub-section (2) of section 20 of the Indian  
Army Act, 1911 (hereinafter referred to as the said VIII of 1911  
Act),—

(1) for the words "Imprisonment in military  
custody may be specified as such a minor punish-  
ment" the words "Imprisonment in military cus-  
tody and, in the case of persons subject to this Act  
on active service, any prescribed field punishment  
may be specified as minor punishments" shall be  
substituted; and

(2) in clause (a) after the word "imprisonment"  
the words "or field punishment" shall be inserted.

3. In section 24 of the said Act—

Amendment  
of section 24  
of Act VIII  
of 1911.

(1) to sub-section (1) the words "He may at any  
time arrest and detain for trial any person subject  
to this Act who commits an offence and may also  
carry into effect any punishments to be inflicted in  
pursuance of the sentence of a court-martial" shall  
be added; and

(2) for sub-sections (2) and (3) the following sub-  
section shall be substituted, namely:—

"(2) A provost-marshal may punish with any  
punishment mentioned in section 22, sub-section (1).  
clause (b)



clause (b) any follower who is subject to this Act under section 2, sub-section (1), clause (c) and is a menial servant and who on active service and in his view, or in the view of any of his assistants, commits any breach of good order and military discipline."

4. In section 41 of the said Act—

(1) in clause (a) after the word "punishment," and

(2) in clause (b) after the word "punishment," where it first occurs,

the words "other than whipping" shall be inserted.

5. For section 45 of the said Act the following section shall be substituted, namely:—

"45. Where any person, subject to this Act and under the rank of warrant officer, on active service is guilty of any offence, it shall be lawful for a court-martial to award for that offence any such punishment, other than flogging as may be prescribed as a field punishment. Field punishment shall be of the character of personal restraint or of hard labour but shall not be of a nature to cause injury to life or limb."

6. In sections 46 and 49 of the said Act, for the words "corporal punishment" the words "field punishment" shall be substituted.

7. In section 50 of the said Act—

(1) to clause (a) the words "or of field punishment awarded by a court-martial or such officer" shall be added; and

(2) in clause (b) after the word "imprisonment" the words "or field punishment" shall be inserted.

8. For section 67 of the said Act the following section shall be substituted, namely:—

"67. No trial by court-martial of any person subject to this Act for any offence (other than an offence of mutiny, desertion or fraudulent enrolment)

Amendment of section 41 of Act VIII of 1911.

Substitution of new section for section 45 of Act VIII of 1911.

Field punishment.

Amendment of sections 46 and 49 of Act VIII of 1911.

Amendment of section 50 of Act VIII of 1911.

Substitution of new section for section 67 of Act VIII of 1911.

Limitation of trial

ment) shall be commenced after the expiration of three years from the date of such offence, and no such trial for an offence of desertion (other than desertion on active service) or of fraudulent enrolment shall be commenced if the person in question has, subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of His Majesty's regular forces.

*Explanation.*—For the purposes of this section, 'mutiny' means any of the offences specified in clauses (a), (b) and (c) of section 27."

Amendment  
of section 113  
of Act VIII  
of 1911.

9. After clause (b) of sub-section (2) of section 113 of the said Act the following clause shall be inserted, namely:—

"(bb) the specification of the punishments which may be awarded as field punishments under sections 20 and 45."

Repeal of  
section 111  
of Act VIII  
of 1911.

10. Section 111 of the said Act is hereby repealed.

# ACT No. XXXIII OF 1923.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the 31st July, 1923.)

An Act further to amend the Indian Army Act, 1911, and the Indian Lunacy Act, 1912, for certain purposes.

VIII of  
1911.  
IV of 1912.

WHEREAS it is expedient further to amend the Indian Army Act, 1911, and the Indian Lunacy Act, 1912, for certain purposes hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called the Indian Army (Amendment) Act, 1923. Short title.

VIII of  
1911.

2. In section 7 of the Indian Army Act, 1911 (hereinafter referred to as the said Act),— Amendment of section 7, Act VIII of 1911

(a) to clause (1) after the words “land forces” the following words shall be added, namely:—

“and includes, in relation to a person subject to this Act when serving under such conditions as may be prescribed, a person holding a commission in His Majesty’s Air Force”; and

(b) in clause (7), after the words “Army Act” the words “or the Air Force Act” shall be added.

3. To section 91A of the said Act the following sub-section shall be added, namely:— Amendment of section 91A, Act VIII, of 1911

“(7) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to

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*Indian Army (Amendment).* [ACT XXXIII

to Government upon any matter or thing duly submitted to him for examination or analysis and report may be used as evidence in any proceeding under this Act."

Insertion  
of new sec-  
tion 103A in  
Act VIII of  
1911.

Provision in  
the case of  
accused being  
lunatic.

4. In Chapter VIII of the said Act, after section 103 the following section shall be inserted, namely:—

" 103A. (1) Whenever, in the course of a trial by court-martial, it appears to the Court that the person charged is of unsound mind and consequently incapable of making his defence, or that such person committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the Court shall record a finding accordingly, and the President of the Court or the officer holding the trial, as the case may be, shall forthwith report the case to the confirming officer, or, in the case of a court-martial whose finding does not require confirmation, to the prescribed officer.

(2) A confirming officer to whom a case is reported under sub-section (1) may, if he does not confirm the finding, take steps to have the accused person tried by the same or another court-martial for the offence with which he was originally charged.

(3) A prescribed officer to whom a case is reported under sub-section (1) and a confirming officer confirming a finding in any case so reported to him shall order the accused person to be kept in custody in the prescribed manner, and shall report the case for the orders of the Governor General in Council.

(4) On receipt of a report under sub-section (3), the Governor General in Council may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

(5) Where an accused person, having been found by reason of unsoundness of mind to be incapable  
of

OF 1923.] *Indian Army (Amendment).*

of making his defence, is in custody or under detention, the prescribed officer may—

(a) if such person is in custody under sub-section (3), on the report of a medical officer that he is capable of making his defence, or

(b) if such person is detained under sub-section (4), on a certificate such as is referred to in section 473 of the Code of Criminal Procedure, 1898,

V of 1898.

take steps to have such person tried by the same or another court-martial for the offence with which he was originally charged or, provided that the offence is a civil offence, by a Criminal Court.

(6) A copy of every order made by the prescribed officer under sub-section (5) shall forthwith be sent to the Governor General in Council."

IV of 1912

5. In the Indian Lunacy Act, 1912—

(a) to clause (4) of section 3 after the figures "1900" the words and figures "or of section 103A of the Indian Army Act, 1911" shall be added;

(b) in section 24, after the figures "1900" the words and figures "or under section 103A of the Indian Army Act, 1911" shall be inserted;

(c) in sub-section (1) of section 30, after the figures "1898" the words and figures "or under the provisions of section 103A of the Indian Army Act, 1911" shall be inserted; and

(d) in sub-section (2) of section 35, after the figures "1898" the words and figures "or under section 103A of the Indian Army Act, 1911" shall be inserted.

VIII of 1911

Amendment  
of sections  
3, 24, 30 and  
35. Act IV  
of 1912.

# ACT No. XXXIII OF 1934.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the 8th  
September, 1934.)

**An Act further to amend the Indian Army Act, 1911, for  
certain purposes.**

VIII of 1911.

**W**HEREAS it is expedient further to amend the Indian Army  
Act, 1911, for the purposes hereinafter appearing; It is  
hereby enacted as follows:—

1. This Act may be called the Indian Army (Amendment)  
Act, 1934. Short title.

VIII of 1911.

2. In the preamble to the Indian Army Act, 1911 (hereinafter  
referred to as the said Act), for the words "Indian officers" the  
words "Indian commissioned officers, Viceroy's commissioned  
officers" shall be substituted. Amendment  
of the pream-  
ble, Act VIII  
of 1911.

3. In section 2 of the said Act,—

Amendment of  
section 2, Act  
VIII of 1911.

(a) in clause (a) of sub-section (1), for the words "Indian  
officers" the words "Indian commissioned officers,  
Viceroy's commissioned officers" shall be substi-  
tuted; and

(b) in sub-section (2), for the words "discharged or  
dismissed" the words "retired, discharged,  
cashiered, removed or dismissed from the service"  
shall be substituted.

4. In sub-section (1) of section 3 of the said Act, for the  
words "Indian officers" the words "Indian commissioned officers,  
Viceroy's commissioned officers" shall be substituted. Amendment of  
section 3,  
Act VIII of  
1911.

5. In section 7 of the said Act,—

Amendment of  
section 7, Act  
VIII of 1911.

(a) for clause (1) the following clause shall be substituted,  
namely:—

"(1) 'British officer' means a person holding His  
Majesty's commission in His Majesty's Land  
Forces or in the Royal Marines or in the Terri-  
torial Army, and includes, in relation to a person  
subject to this Act when serving under such con-  
ditions as may be prescribed, a person holding a  
commission in His Majesty's Naval Forces or  
Royal Air Force;"

(b) for

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(b) for clause (2) the following clauses shall be substituted, namely:—

“(2) ‘Indian commissioned officer’ means a person commissioned, gazetted or in pay as an officer holding His Majesty’s commission in the Indian Land Forces, and includes, in relation to a person subject to this Act when serving under such conditions as may be prescribed, a person holding a commission in the Indian Air Force:

(2A) ‘Viceroy’s commissioned officer’ means a person commissioned, gazetted or in pay as a Viceroy’s commissioned officer in the Indian Army:”;

(c) for clause (5) the following clause shall be substituted, namely:—

“(5) ‘officer’ means an officer of any of His Majesty’s Military Forces, and includes, in relation to a person subject to this Act when serving under such conditions as may be prescribed, an officer of any of His Majesty’s Naval or Air Forces, but does not include a warrant officer, petty officer or non-commissioned officer:”;

(d) in clause (6), after the words “British officer” the words “or Indian commissioned officer” shall be inserted;

(e) in clause (7), for the words “a warrant officer or non-commissioned officer subject to the Army Act or the Air Force Act” the words “an officer, warrant officer, petty officer or non-commissioned officer of any of His Majesty’s Naval, Military or Air Forces” shall be substituted;

(f) to clause (8) the words “or His Majesty’s Indian Forces” shall be added; and

(g) in clause (14), after the word “service” the words “and includes air force custody” shall be inserted.

6. In section 10 of the said Act, after the words “military pay” the words “as an enrolled person” shall be inserted.

7. Section 13 of the said Act shall be re-numbered as sub-section (1) of section 13, and in that section as so re-numbered,—

(a) the words “or the Commander-in-Chief in India” shall be omitted, and

(b) the following sub-section shall be added, namely:—

“(2) The Commander-in-Chief in India may dismiss from the service any person subject to this Act other than an Indian commissioned officer.”

8. In

Amendment to  
section 10, Act  
VIII of 1911.  
Amendment of  
section 13, Act  
VIII of 1911.

Words  
in italics  
in Act.

of 1934.]

*Indian Army (Amendment).*

8. In section 14 of the said Act, the word "Indian" shall be omitted.

Amendment of  
section 14, Act  
VIII of 1911.

9. In sub-section (1) of section 19 of the said Act,—

Amendment of  
section 19, Act  
VIII of 1911.

(a) after the words "to the ranks" the words "any warrant officer or" shall be inserted; and

(b) the following proviso shall be added, namely:—

"Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy."

10. In section 21 of the said Act, for the words "Indian officers" the words "Viceroy's commissioned officers, warrant officers" shall be substituted.

Amendment of  
section 21, Act  
VIII of 1911.

11. In clause (b) of section 36 of the said Act, after the word and figures "section 117" the words, figures and letter "or section 117A" shall be inserted.

Amendment of  
section 36, Act  
VIII of 1911.

12. (1) Section 41 of the said Act shall be re-numbered as sub-section (1) of section 41.

Amendment of  
section 41, Act  
VIII of 1911.

(2) In the said section as so re-numbered,—

(a) after the words "Every person subject to this Act who" the words "either within British India or" shall be inserted;

(b) the words "or when on active service in British India," shall be omitted; and

(c) the following proviso shall be added, namely:—

"Provided that a person subject to this Act who at any place within British India or at any place, other than such frontier posts as may be specified by the Governor General in Council by notification in this behalf, in which the Governor General in Council exercises jurisdiction by virtue of the Indian (Foreign Jurisdiction) Order in Council, 1902, and while not on active service, commits the offence of murder or culpable homicide not amounting to murder in relation to a person not subject to military law or the offence of rape, shall not be deemed to be guilty of an offence against military law and shall not be tried by a court-martial."

(3) To the said section as so re-numbered and amended the following sub-section shall be added, namely:—

"(2) The powers of a court-martial to try and to punish any person under this section shall not be affected

by

by reason of the fact that the civil offence with which such person is charged is also a military offence."

Omission of section 42, Act VIII of 1911.  
Amendment of section 43, Act VIII of 1911.

13. Section 42 of the said Act shall be omitted.

14. In section 43 of the said Act,—

(a) after clause (c) the following clause shall be inserted, namely:—

"(cc) in the case of Indian commissioned officers, cashiering;";

(b) clause (e) shall be omitted;

(c) for clause (f) the following clause shall be substituted, namely:—

"(f) reduction, in the case of a warrant officer, to a lower grade or class or place in the list of his rank, or to the ranks; or in the case of a non-commissioned officer, to a lower grade or a lower rank or to the ranks:

Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy;";

(d) in clause (g), for the words "of seniority of rank" the words "in the prescribed manner of seniority of rank and service for the purpose of promotion" shall be substituted;

(e) in clause (gg), after the word "officers," the words "warrant officers and non-commissioned officers," shall be inserted; and

(f) in clause (h),—

(i) in sub-clause (i), the word "promotion," shall be omitted,

(ii) sub-clause (ii) shall be omitted, and

(iii) in sub-clause (iii), after the words "sentenced to" and after the word "such" the words "cashiering or" shall be inserted.

Amendment of section 47, Act VIII of 1911.

15. In section 47 of the said Act, for the words "any one or more of the punishments specified in clauses (d), (f), (gg) and (h) of section 43" the following words shall be substituted, namely:—

"the punishment specified in clause (cc) or clause (d) and any one or more of the punishments specified in clauses (f), (g), (gg) and (h) of section 43".

16. After



or 1934.]

*Indian Army (Amendment).*

16. After section 47 of the said Act the following section shall be inserted, namely:—

“47A. Whenever an Indian commissioned officer is sentenced to transportation or imprisonment, the court shall by its sentence sentence such officer to be cashiered.”

Insertion of new section 47A in Act VIII of 1911.

Cashiering of Indian commissioned officer on conviction.

17. In section 49 of the said Act, for the words “A non-commissioned officer” the words “A warrant officer or a non-commissioned officer” shall be substituted.

Amendment of section 49, Act VIII of 1911.

18. In section 49A of the said Act, for the words “any person” the words “any enrolled person” shall be substituted.

Amendment of section 49A, Act VIII of 1911.

19. (1) Section 50 of the said Act shall be re-numbered as sub-section (2) of section 50 and in that section as so re-numbered, after the words “a person subject to this Act”, in both places where they occur, the words “other than an Indian commissioned officer” shall be inserted.

Amendment of section 50, Act VIII of 1911.

(2) The following sub-section shall be inserted as sub-section (1) of section 50, namely:—

“(1) The following penal deductions may be made from the pay and allowances of an Indian commissioned officer, that is to say,—

- (a) all pay and allowances for every day of absence without leave, unless a satisfactory explanation has been given through his Commanding Officer and has been approved by the Governor General in Council;
- (b) any sum required to make good such compensation for any expenses, loss, damage or destruction occasioned by the commission of any offence as may be determined by the court-martial by whom he is convicted of such offence;
- (c) any sum required to make good the pay of any person subject to this Act which he has unlawfully retained or unlawfully refused to pay;
- (d) any sum required to make good any loss, damage or destruction of public or regimental property which after due investigation appears to the Governor General in Council to have been occasioned by any wrongful act or negligence on the part of the Indian commissioned officer;
- (e) any sum ordered by a court-martial to be stopped under section 43.”

20. For

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Substitution of new section for section 57, Act VIII of 1911.  
Composition of general courts-martial.

20. For section 57 of the said Act the following section shall be substituted, namely :—

"57. A general court-martial shall consist of not less than five British officers or Indian commissioned officers, each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that of Captain."

Amendment of section 58, Act VIII of 1911.

21. In section 58 of the said Act, for the word "officers" the words "British officers or Indian commissioned officers" shall be substituted.

Omission of section 59, Act VIII of 1911.

22. Section 59 of the said Act shall be omitted.

Substitution of new section for section 60, Act VIII of 1911.

23. For section 60 of the said Act, the following section shall be substituted, namely :—

"60. A general, summary general or district court-martial may be composed of either British officers or Indian commissioned officers or of both British officers and Indian commissioned officers."

Composition of general summary general or district court-martial.

Omission of section 61, Act VIII of 1911.

24. Section 61 of the said Act shall be omitted.

Amendment of section 63, Act VIII of 1911.

25. In section 63 of the said Act, for the word "officers" the words "British officers or Indian commissioned officers" shall be substituted.

Amendment of section 65, Act VIII of 1911.

26. In section 65 of the said Act, the proviso to sub-section (1) shall be omitted.

Amendment of section 67, Act VIII of 1911.

27. In section 67 of the said Act, after the words "the person in question" the brackets and words "(not being an Indian commissioned officer)" shall be inserted.

Amendment of section 73, Act VIII of 1911.

28. To section 73 of the said Act the following proviso shall be added, namely :—

"Provided that a district court-martial shall not award to a warrant officer any punishment other than the punishment specified in clause (h) of section 43 or, either in addition to or in substitution for any such punishment, the punishment specified in clause (d) or the punishment specified in clause (f) of that section."

Amendment of section 74, Act VIII of 1911.

29. In clause (a) of the proviso to section 74 of the said Act for the figures and word "41 or 42" the word and figures "or 41" shall be substituted.

Omission of section 79, Act VIII of 1911.

30. Section 79 of the said Act shall be omitted.

Amendment of section 82, Act VIII of 1911.

31. In section 82 of the said Act, the words "or superintending officer" shall be omitted.

32. In

or 1934.]

*Indian Army (Amendment).*

32. In sub-section (1) of section 84 of the said Act, the words "before the court" shall be omitted.

Amendment of section 84, Act VIII of 1911.

33. In sub-section (4) of section 86 of the said Act, the words and figures "or section 42" shall be omitted.

Amendment of section 86, Act VIII of 1911.

34. Section 105 of the said Act shall be omitted.

Omission of section 105, Act VIII of 1911.

35. In section 107 of the said Act, the word "rigorous", wherever it occurs, shall be omitted.

Amendment of section 107, Act VIII of 1911.

36. In section 108 of the said Act, the words and figures "section 105 or" shall be omitted.

Amendment of section 108, Act VIII of 1911.

37. In section 111A of the said Act, the words and figures "or section 42" shall be omitted.

Amendment of section 111 A, Act VIII of 1911.

38. In sub-section (3) of section 112 of the said Act, before the words "a non-commissioned officer" the words "a warrant officer or" shall be inserted.

Amendment of section 112, Act VIII of 1911.

39. In clause (a) of sub-section (2) of section 113 of the said Act, for the word "discharge" the words "removal, retirement or discharge" shall be substituted.

Amendment of section 113, Act VIII of 1911.

40. In section 117 of the said Act,—

Amendment of section 117, Act VIII of 1911.

(a) in sub-section (1), after the words "Any person subject to this Act" the words "other than an Indian commissioned officer" shall be inserted; and

(b) to sub-section (3), the following proviso shall be added, namely:—

"Provided that a decision by an authority competent to dispose of the matter complained of shall be final."

41. After section 117 of the said Act the following section shall be inserted, namely:—

Insertion of new section 117A in Act VIII of 1911.

"117A. Any Indian commissioned officer who deems himself wronged by his Commanding Officer or any superior officer and who on due application made to his Commanding Officer does not receive the redress to which he considers himself entitled, may complain to the Governor General in Council."

Complaints by Indian commissioned officers.

42. In sub-section (1) of section 118 of the said Act, the words "or superintending officer" shall be omitted.

Amendment of section 118, Act VIII of 1911.



# ACT No. VII OF 1935.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the 28th September, 1935.)

## An Act further to amend the Indian Army Act, 1911, for certain purposes.

VIII of 1911.

**W**HEREAS it is expedient further to amend the Indian Army Act, 1911, for the purposes hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called the Indian Army (Amendment) Shorttitle. Act, 1935.
2. In sub-section (2) of section 50 of the Indian Army Act, VIII of 1911. 1911 (hereinafter referred to as the said Act),—
  - (a) for clause (d) the following clause shall be substituted, namely:—

“(d) all pay and allowances ordered by a court-martial under section 43, or by an officer exercising authority under section 20, to be forfeited;” and
  - (b) in clause (g) the words and figures “or section 42” shall be omitted.
3. In the proviso to section 73 of the said Act, for the words, brackets, letter and figures “the punishment specified in clause (h) of section 43 or” the following shall be substituted, Amendment of section 73, Act VIII of 1911. namely:—

“the punishments specified in clauses (g), (gg) and (h) of section 43 or”.
4. After sub-section (5) of section 103A of the said Act the following sub-sections shall be inserted, namely:—
  - “(5A) Where any person is in custody under sub-section (3) or under detention under sub-section (4),—
    - (a) if such person is in custody under sub-section (3), on the report of a medical officer, or
    - (b) if

Amendment of section 103A, Act VIII of 1911.

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*Indian Army (Amendment).*

- (b) if such person is detained under sub-section (4), on a certificate from any of the authorities empowered to grant a certificate under section 473 of the Code of Criminal Procedure, 1898,

V of 1898.

that, in the judgment of such officer or authority, such person may be released without danger of his doing injury to himself or to any other person, the Governor General in Council may thereupon order such person to be released, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum.

- (5B) Where any relative or friend of any person who is in custody under sub-section (3) or under detention under sub-section (4) desires that he shall be delivered to his care and custody, the Governor General in Council may, upon the application of such relative or friend and on his giving security to the satisfaction of the Governor General in Council that the person delivered shall—

- (a) be properly taken care of and prevented from doing injury to himself or to any other person, and  
(b) be produced for the inspection of such officer, and at such times and places, as the Governor General in Council may direct,

order such person to be delivered to such relative or friend."



# ACT No. XXI OF 1943.

[PASSED BY THE INDIAN LEGISLATURE]

(Received the assent of the Governor General on the 13th August, 1943.)

An Act further to amend the Indian Army Act, 1911, and the Indian Air Force Act, 1932.

WHEREAS it is expedient further to amend the Indian Army Act, 1911 (VIII of 1911), and the Indian Air Force Act, 1932 (XIV of 1932), for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. *Short title.*—This Act may be called the Indian Army and Indian Air Force (Amendment) Act, 1943.

2. *Amendment of section 50, Act VIII of 1911.*—To clause (b) of sub-section (1) of section 50 of the Indian Army Act, 1911 (VIII of 1911), the following words and figure shall be added, namely:—

“or by an officer exercising authority under section 20”.

3. *Amendment of section 86, Act VIII of 1911.*—In sub-section (2) of section 86 of the Indian Army Act, 1911 (VIII of 1911), the words “of desertion or” shall be omitted.

4. *Substitution of new section for section 103, Act VIII of 1911.*—For section 103 of the Indian Army Act, 1911 (VIII of 1911), the following section shall be substituted, namely:—

“103. *Substitution of a valid finding or sentence for an invalid finding or sentence.*—(1) Where a finding of guilty by a court-martial, which has been confirmed, or which does not require confirmation, is found for any reason to be invalid or cannot be supported by the evidence, the authority which would have had power under section 112, to commute the punishment awarded by the sentence, if the finding had been valid, may substitute a new finding, if the new finding could have been validly made by the court-martial on the charge and if it appears that the court-martial must have been satisfied of the facts establishing the offence specified or involved in the new finding, and may pass a sentence for the said offence.

(2) Where a sentence passed by a court-martial which has been confirmed, or which does not require confirmation, not being a sentence passed in pursuance of a new finding substituted under sub-section (1), is found for any reason to be invalid, the authority which would have had power under section 112 to commute the punishment awarded by the sentence if it had been valid may pass a valid sentence.

(3) The punishment awarded by a sentence passed under sub-section (1) or sub-section (2) shall not be higher in the scale of punishments than, or in excess of the punishment awarded by, the sentence for which a new sentence is substituted under this section.”

5. *Amendment of section 116, Act VIII of 1911.*—In section 116 of the Indian Army Act, 1911 (VIII of 1911),—

(a) for the word and figure “section 114” the words and figures “sections 114 and 115” shall be substituted;

(b) in the proviso, for the words “of the said section”, the words and figure “of section 114” shall be substituted.

6. *Amendment of section 26, Act XIV of 1932.*—To clause (b) of sub-section (1) of section 26 of the Indian Air Force Act, 1932 (XIV of 1932), the following words and figure shall be added, namely:—

“Or by an officer exercising authority under section 25;”



7. *Amendment of section 91, Act XIV of 1932.*—In sub-section (2) of 91 of the Indian Air Force Act, 1932 (XIV of 1932), the words "of desert shall be omitted.

8. *Substitution of new section for section 108, Act XIV of 1932.*—For 108 of the Indian Air Force Act, 1932 (XIV of 1932), the following section be substituted, namely:—

"108. *Substitution of a valid finding or sentence for an invalid finding.*—(1) Where a finding of guilty by a court-martial, which has been confirmed, or which does not require confirmation, is found for any reason to be invalid or cannot be supported by the evidence, the authority which would have had power under section 110, to commute the punishment awarded by the sentence, if the finding had been valid, may substitute a new finding, and if it appears that the court-martial must have been satisfied of the guilt of the offender in establishing the offence specified or involved in the new finding, and may award a sentence for the said offence.

(2) Where a sentence passed by a court-martial, which has been confirmed, or which does not require confirmation, not being a sentence passed in pursuance of a new finding substituted under sub-section (1), is found for any reason to be invalid, the authority which would have had power under section 110 to commute the punishment awarded by the sentence if it had been valid may pass a new sentence.

(3) The punishment awarded by a sentence passed under sub-section (2) shall not be higher in the scale of punishments than, or in excess of, the punishment awarded by the sentence for which a new sentence is substituted under this section."

9. *Substitution of new section for section 116, Act XIV of 1932.*—For 116 of the Indian Air Force Act, 1932 (XIV of 1932), the following section be substituted, namely:—

"116. *Communication of certain orders to prison officers.*—Whenever a sentence is duly made under this Act setting aside or varying any sentence, or a warrant under which any person is confined in a civil, military or air force prison, a warrant in accordance with such order shall be forwarded by the prison officer to the officer-in-charge of the prison in which such person is confined."

10. *Amendment of section 128, Act XIV of 1932.*—In section 128 of the Indian Air Force Act, 1932 (XIV of 1932),—

(a) for the word and figure "section 126" the words and figures "section 127" shall be substituted;

(b) in the proviso, for the words "of the said section", the words and figures "of section 126" shall be substituted.

# Act No. XVII of 1948

[PASSED BY THE DOMINION LEGISLATURE]

An Act further to amend the Indian Army Act, 1911 and the Indian Air Force Act, 1932, for certain purposes and to make certain consequential amendments to the Administrator General's Act, 1913.

(Received the assent of the Governor-General on the 29th March 1948)

**W**HEREAS it is expedient further to amend the Indian Army Act, 1911 (VIII of 1911) and the Indian Air Force Act, 1932 (XIV of 1932) for the purposes hereinafter appearing and to make certain consequential amendments to the Administrator General's Act, 1913 (III of 1913);

It is hereby enacted as follows:—

**1. Short title.**—This Act may be called the Indian Army and the Indian Air Force (Amendment) Act, 1948.

**2. Amendment of section 114, Act VIII of 1911.**—In section 114 of the Indian Army Act, 1911,—

(i) in the opening paragraph for the word “rules” the word “provisions” shall be substituted and after the words “this Act” the words “not being an Indian commissioned officer,” shall be inserted;

(ii) for clause (2) the following clause shall be substituted, namely:—

“(2) In the case of a deceased person who has left in a bank (including any post office savings bank, co-operative bank or society or any other institution receiving deposits in money, however named) a deposit not exceeding one thousand rupees, the commanding officer may, if he thinks fit, require the agent, manager or other proper officer of such bank, society or other institution to pay the deposit to him forthwith, notwithstanding anything in any rules of the bank, society or other institution and when any money has been paid by such bank, society or other institution in compliance with such requisition, no person shall have any claim against the bank, society or other institution in respect of such money”;

(iii) in clause (4) after the words “cause the moveable property to be sold by public auction” the words “and may convert into money any cash certificates (including post office cash certificates, defence savings certificates and national savings certificates)” and after the words “proceeds of the sale” the words “or conversion” shall be inserted;

(iv) clause (7) and the *Explanations* shall be omitted and clause (8) shall be renumbered (7);

(v) in clause (7) as so renumbered the words “or the Standing Committee of Adjustment, as the case may be” shall be omitted and after the words “a deceased person” the words “or deserter” shall be inserted.

**3. Substitution of new sections for section 116, Act VIII of 1911.**—For section 116 of the Indian Army Act, 1911, the following sections shall be substituted, namely:—

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"116. *Application of sections 114 and 115 to lunatics, etc.*—The provisions of sections 114 and 115 shall, so far as they can be made applicable, apply in the case of a person subject to this Act, not being an Indian commissioned officer, who, notwithstanding anything contained in the Indian Lunacy Act, 1912 (IV of 1912) is ascertained in the prescribed manner to be insane, or, who, being on active service, is officially reported missing, as if he had died on the day on which his insanity is so ascertained, or, as the case may be, on the day on which he is officially reported missing:

Provided that in the case of a person so reported missing no action shall be taken under clauses (2) to (5), inclusive, of section 114 until such time as such person is officially presumed to be dead.

116A. *Property of Indian commissioned officers who die or desert.*—The provisions of sections 116B to 116I, inclusive, shall apply to the disposal of the property of Indian commissioned officers subject to this Act, who die or desert.

116B. *Powers of Committee of Adjustment.*—(1) On the death or desertion of an Indian commissioned officer, a Committee of Adjustment appointed in this behalf in the manner prescribed (hereinafter referred to as the Committee) shall, as soon as may be, subject to the rules made in this behalf under this Act,—

(a) secure all the moveable property belonging to the deceased or deserter, that is in camp or quarters, and cause an inventory thereof to be made, and ascertain and draw the pay and allowances, if any, due to him; and

(b) ascertain the amount, and provide for the payment, of the regimental and other debts in camp or quarters (if any) of the deceased or deserter.

(2) In the case of a deceased Indian commissioned officer whose representative, widow (if any) or next of kin has given security to the satisfaction of the Committee for the payment of the regimental and other debts in camp or quarters (if any) of the deceased, the Committee shall deliver any property received by it under sub-section (1) to that representative, widow or next of kin, as the case may be, and shall not further interfere in relation to the property of the deceased.

(3) In the case of a deceased Indian commissioned officer, the Committee, save as may be prescribed, shall, if it appears to it necessary for the payment of regimental and other debts in camp or quarters and the expenses, if any, incurred by the Committee, and may, in any other case, collect all moneys left by the deceased in any bank (including any post office savings bank, co-operative bank or society or any other institution receiving deposits in money, however named) and for that purpose may require the agent, manager or other proper officer of such bank, society or other institution to pay the moneys to the Committee forthwith, and such agent, manager or other officer shall be bound to comply with the requisition notwithstanding anything in any rules of the bank, society or other institution, and when any money has been paid by a bank, society or other institution in compliance with the requisition under this sub-section, no person shall have a claim against the bank, society or other institution in respect of such money.

(4) In the case of a deceased Indian commissioned officer whose estate has not been dealt with under sub-section (2) and in the case of a deserter, the Committee, subject to any rules made in this behalf under this Act, shall, for the purpose of paying the regimental and other debts in camp or quarters, and may in any other case, sell or convert into money the moveable property of the deceased or deserter.



(5) The Committee shall, out of the moneys referred to in sub-sections (3) and (4), pay the regimental and other debts in camp or quarters (if any) of the deceased or deserter.

(6) In the case of a deceased Indian commissioned officer the surplus (if any) shall be remitted to the prescribed person.

(7) In the case of an Indian commissioned officer who is a deserter, the surplus (if any) shall be forthwith remitted to the prescribed person and shall, on the expiry of three years from the date of his desertion, be forfeited to the Central Government unless the deserter shall in the meantime have surrendered or been apprehended:

Provided that the prescribed person may pay the whole or such part of the surplus as he may deem proper to the wife or children or other dependents of the commissioned officer.

(8) If in any case a doubt or difference arises as to what are the regimental and other debts in camp or quarters of a deceased officer or deserter or as to the amount payable therefor, the decision of the prescribed person shall be final and shall be binding on all persons for all purposes.

(9) For the purpose of the exercise of its duties under this section, the Committee shall, to the exclusion of all authorities and persons whomsoever, have the same rights and powers as if it had taken out representation to the deceased, and any receipt given by the Committee shall have effect accordingly.

**116C. Power of Central Government to hand over the estate of a deceased officer to Administrator General.**—(1) Notwithstanding anything contained in the Administrator General's Act, 1913 (III of 1913), an Administrator General shall not interpose in any manner in relation to any property of a deceased Indian commissioned officer which has been dealt with under the provisions of section 116B except in so far as he is expressly required or permitted to do so by or under the provisions contained in this Chapter.

(2) The Central Government may at any time and in such circumstances as it thinks fit direct that the estate of a deceased Indian commissioned officer shall be handed over by the Committee to the Administrator General of a Province for administration and thereupon the Committee shall make over the estate to such Administrator General.

(3) Where under this section any estate is handed over to the Administrator General he shall administer the estate in accordance with the provisions of the Administrator General's Act, 1913 (III of 1913):

Provided that the regimental and other debts in camp or quarters of the deceased officer (if any) shall be paid in priority to any other debt due by him.

(4) The Administrator General shall pay the surplus, if any, remaining in his hands after discharging all debts and charges, to the heirs of the deceased and, if no heir is traceable, shall remit such surplus to the prescribed person in the prescribed manner.

(5) The Administrator General shall not charge in respect of his duties any fee exceeding three per cent. of the gross amount coming to or remaining in his hands after payment of the regimental and other debts in camp or quarters.

**116D. Disposal of surplus by the prescribed person.**—On receipt of the surplus referred to in sub-section (6) of section 116B or sub-section (4) of section 116C, the prescribed person shall proceed as follows:—

(1) If he knows of a representative of the deceased, he shall pay the surplus to that representative.

(2) If he does not know of any such representative, he shall publish every year a notice in the prescribed form and manner for six consecutive years. If no claim to the surplus is made by a representative of

the deceased within six months after the publication of the last of such notices, the prescribed person shall deposit the surplus together with any income or accumulation of income accrued therefrom to the credit of the Central Government:

Provided that such deposit shall not bar the claim of any person to such surplus or any part thereof.

**116E. Disposal of effects not money.**—Where any part of the estate of a deceased Indian commissioned officer consists of effects, securities or other property not converted into money, the provisions of section 116B and section 116D with respect to paying the surplus shall, save as may be prescribed, extend to the delivery, transmission or transfer of such effects, securities or property, and the prescribed person shall have the same power of converting the same into money as a representative of the deceased.

**116F. Disposal of certain property without production of probate, etc.**—Property deliverable and money payable to the representative of a deceased Indian commissioned officer under section 116B or section 116D may, if the total amount or value thereof does not exceed five thousand rupees, and, if the prescribed person thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, succession certificate or other such conclusive evidence of title.

**116G. Discharge of Committee, prescribed person and the Crown.**—Any payment of money or delivery, application, sale or other disposition of any property or money made, or purported to be made, by the Committee or the prescribed person in good faith in pursuance of section 116B, section 116D, section 116E or section 116F shall be valid and shall be a full discharge to the Committee or the prescribed person, as the case may be, and to the Crown from all further liability in respect of that money or property; but nothing herein contained shall affect the right of any executor or administrator or other representative, or of any creditor of the deceased officer against any person to whom such payment or delivery has been made.

**116H. Property in the hands of the Committee or the prescribed person not to be assets at the place where the Committee or the prescribed person is stationed.**—Any property coming under section 116B or under sub-section (4) of section 116C into the hands of the Committee or the prescribed person shall not, by reason of so coming, be deemed to be assets or effects at the place in which that Committee or the prescribed person is stationed and it shall not be necessary by reason thereof that representation be taken out in respect of that property for that place.

**116I. Saving of rights of representative.**—After the Committee has deposited with the prescribed person the surplus of the property of any deceased officer under sub-section (6) of section 116B, any representative of the deceased or any Administrator General, shall, as regards any property of the deceased not collected by the Committee and not forming part of the aforesaid surplus, have the same rights and duties as if section 116B had not been enacted.

**116J. Application of sections 116B to 116I to lunatics, etc.**—The provisions of sections 116B to 116I shall, so far as they can be made applicable, apply in the case of an Indian commissioned officer who, notwithstanding anything contained in the Indian Lunacy Act, 1912 (IV of 1912), is ascertained in the prescribed manner to be insane, or who, being on active service, is officially reported missing, as if he had died on the day on which his insanity is so ascertained or, as the case may be, on the day on which he is officially reported missing:

Provided that in the case of an officer so reported missing no action shall be taken under sub-sections (2) to (5) of section 116B or under section 116C until such time as he is officially presumed to be dead.

116K. *Appointment of Standing Committee of Adjustment when officers die or desert while on active service.*—When an Indian commissioned officer dies or deserts while on active service, the references in the foregoing provisions of this Chapter to the Committee shall be construed as references to the Standing Committee of Adjustment, if any, appointed in this behalf in the manner prescribed.

116L. *Interpretation.*—For the purposes of this Chapter—

(1) the expression 'regimental and other debts in camp or quarters' includes money due as military debts, namely, sums due in respect of, or of any advance in respect of—

(a) quarters;

(b) mess, band, and other regimental accounts;

(c) military clothing, appointments and equipments, not exceeding a sum equal to three months' pay of the deceased, and having become due within eighteen months before his death;

(2) 'representation' includes probate and letters of administration with or without the will annexed, and a succession certificate, constituting a person the executor or administrator of the estate of a deceased person or authorising him to receive or realize the assets of a deceased person;

(3) 'representative' means any person who has taken out representation but does not include an Administrator General."

4. *Amendment of section 126, Act XIV of 1932.*—In section 126 of the Indian Air Force Act, 1932,—

(i) in the opening paragraph for the word "rules" the word "provisions" shall be substituted and after the words "this Act" the words "not being an officer or warrant officer of the Indian Air Force," shall be inserted;

(ii) for clause (2) the following clause shall be substituted, namely:—

"(2) In the case of a deceased person who has left in a bank (including any post office savings bank, co-operative bank or society or any other institution receiving deposits in money, however named) a deposit not exceeding one thousand rupees, the commanding officer may, if he thinks fit, require the agent, manager or other proper officer of such bank or other institution to pay the deposit to him forthwith, notwithstanding anything in any rules of the bank or the other institution and when any money has been paid by such bank or other institution in compliance with such requisition, no person shall have any claim against the bank or the other institution in respect of such money";

(iii) in clause (4) after the words "cause the moveable property to be sold by public auction" the words "and may convert into money any cash certificates (including post office cash certificates, defence savings certificates and national savings certificates)" and after the words "proceeds of the sale" the words "or conversion", shall be inserted;

(iv) clause (7) and the *Explanations* shall be omitted and clause (8) shall be renumbered (7);

(v) in clause (7) as so renumbered the words "or the Standing Committee of Adjustment, as the case may be" shall be omitted and after the words "a deceased person" the words "or deserter" shall be inserted.

**5. Substitution of new Sections for section 128, Act XIV of 1932.**—For section 128 of the Indian Air Force Act, 1932, the following sections shall be substituted, namely:—

**"128. Application of sections 126 and 127 to lunatics, etc.**—The provisions of sections 126 and 127 shall, so far as they can be made applicable, apply in the case of a person subject to this Act (not being an officer or warrant officer of the Indian Air Force) who notwithstanding anything contained in the Indian Lunacy Act, 1912 (IV of 1912) is ascertained in the prescribed manner to be insane, or, who, being on active service, is officially reported missing, as if he had died on the day on which his insanity is so ascertained, or, as the case may be, on the day on which he is officially reported missing:

Provided that in the case of a person so reported missing, no action shall be taken under clauses (2) to (5) inclusive of section 126 until such time as such person is officially presumed to be dead.

**128A. Property of officers of the Indian Air Force who die or desert.**—The provisions of sections 128B to 128I shall apply to the disposal of the property of the officers and warrant officers of the Indian Air Force who die or desert.

**128B. Powers of Committee of Adjustment.**—(1) On the death or desertion of an officer or warrant officer of the Indian Air Force, a Committee of Adjustment appointed in this behalf in the manner prescribed (hereinafter referred to as the Committee) shall, as soon as may be, subject to the rules made in this behalf under this Act,—

(a) secure all the moveable property belonging to the deceased or deserter, that is in camp or quarters, and cause an inventory thereof to be made, and ascertain and draw the pay and allowances, if any, due to him; and

(b) ascertain the amount, and provide for the payment, of the service and other debts in camp or quarters (if any) of the deceased or deserter.

(2) In the case of a deceased officer or warrant officer whose representative, widow (if any) or next of kin has given security to the satisfaction of the Committee for the payment of the service and other debts in camp or quarters (if any) of the deceased, the Committee shall deliver any property received by it under sub-section (1) to that representative, widow or next of kin, as the case may be, and shall not further interfere in relation to the property of the deceased.

(3) In the case of a deceased officer or warrant officer, the Committee, save as may be prescribed shall, if it appears to it necessary for the payment of service and other debts in camp or quarters and the expenses, if any, incurred by the Committee, and may, in any other case, collect all moneys left by the deceased in any bank (including any post office savings bank, co-operative bank or society or any other institution receiving deposits in money, however named) and for that purpose may require the agent, manager or other proper officer of such bank, society or other institution to pay the moneys to the Committee forthwith, and such agent, manager or other officer shall be bound to comply with the requisition notwithstanding anything in any rules of the bank or other institution; and when any money has been paid by a bank or other institution in compliance with the requisition under this sub-section, no person shall have a claim against the bank or other institution in respect of such money.

(4) In the case of a deceased officer or warrant officer whose estate has not been dealt with under sub-section (2) and in the case of a deserter the Committee, subject to any rules made in this behalf under this Act, shall, for the purpose of paying the service and other debts in camp or quarters, and may, in any other case, sell or convert into money the moveable property of the deceased or deserter.

(5) The Committee shall, out of the moneys referred to in sub-sections (3) and (4), pay the service and other debts in camp or quarters (if any) of the deceased or deserter.

(6) In the case of a deceased officer or warrant officer, the surplus (if any) shall be remitted to the prescribed person.

(7) In the case of an officer or warrant officer who is a deserter, the surplus (if any) shall be forthwith remitted to the prescribed person and shall, on the expiry of three years from the date of his desertion, be forfeited to the Central Government unless the deserter shall in the meantime have surrendered or been apprehended:

Provided that the prescribed person may pay the whole or such part of the surplus as he may deem proper to the wife or children or other dependents of the officer or warrant officer.

(8) If in any case a doubt or difference arises as to what are the service and other debts in camp or quarters of a deceased officer or deserter or as to the amount payable therefor, the decision of the prescribed person shall be final and shall be binding on all persons for all purposes.

(9) For the purpose of the exercise of its duties under this section, the Committee shall, to the exclusion of all authorities and persons whomsoever, have the same rights and powers as if it had taken out representation to the deceased, and any receipt given by the Committee shall have effect accordingly.

**128C. Powers of Central Government to hand over the estate of a deceased officer to Administrator General.**—(1) Notwithstanding anything contained in the Administrator General's Act, 1913 (III of 1913), an Administrator General shall not interpose in any manner in relation to any property of a deceased officer or warrant officer which has been dealt with under the provisions of section 128B except in so far as he is expressly required or permitted to do so by or under the provisions contained in this Chapter.

(2) The Central Government may at any time and in such circumstances as it thinks fit direct that the estate of a deceased officer or warrant officer shall be handed over by the Committee to the Administrator General of a Province for administration and thereupon the Committee shall make over the estate to such Administrator General.

(3) Where under this section any estate is handed over to the Administrator General, he shall administer the estate in accordance with the provisions of the Administrator General's Act, 1913 (III of 1913):

Provided that the service and other debts in camp or quarters of the deceased officer (if any) shall be paid in priority to any other debt due by him.

(4) The Administrator General shall pay the surplus, if any, remaining in his hands after discharge of all debts and charges, to the heirs of the deceased and, if no heir is traceable, shall remit such surplus to the prescribed person in the prescribed manner.

(5) The Administrator General shall not charge in respect of his duties any fee exceeding three per cent. of the gross amount coming to or remaining in his hands after payment of the service and other debts in camp or quarters.

**128D. Disposal of surplus by the prescribed person.**—On receipt of the surplus referred to in sub-section (6) of section 128B or sub-section (4) of section 128C, the prescribed person shall proceed as follows:—

(1) If he knows of a representative of the deceased, he shall pay the surplus to that representative.

(2) If he does not know of any such representative, he shall publish every year a notice in the prescribed form and manner for six consecutive years. If no claim to the surplus is made by a

representative of the deceased within six months after the publication of the last of such notices, the prescribed person shall deposit the surplus together with any income or accumulation of income accrued therefrom to the credit of the Central Government:

Provided that such deposit shall not bar the claim of any person to such surplus or any part thereof.

128E. *Disposal of effects not money.*—Where any part of the estate of a deceased officer or warrant officer consists of effects, securities or other property not converted into money, the provisions of section 128B and section 128D with respect to paying the surplus shall, save as may be prescribed, extend to the delivery, transmission or transfer of such effects, securities or property, and the prescribed person shall have the same power of converting the same into money as a representative of the deceased.

128F. *Disposal of certain property without production of probate, etc.*—Property deliverable and money payable to the representative of a deceased officer or warrant officer under section 128B or section 128D may, if the total amount or value thereof does not exceed five thousand rupees, and, if the prescribed person thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, succession certificate or other such conclusive evidence of title.

128G. *Discharge of Committee, prescribed person and the Crown.*—Any payment of money or delivery, application, sale or other disposition of any property or money made, or purported to be made by the Committee or the prescribed person in good faith in pursuance of section 128B, section 128D, section 128E or section 128F shall be valid and shall be a full discharge to the Committee or the prescribed person, as the case may be, and to the Crown from all further liability in respect of that money or property; but nothing herein contained shall affect the right of any executor or administrator or other representative, or of any creditor of the deceased officer or warrant officer against any person to whom such payment or delivery has been made.

128H. *Property in the hands of the Committee or the prescribed person not to be assets at the place where the Committee or the prescribed person is stationed.*—Any property coming under section 128B or under sub-section (4) of section 128C into the hands of the Committee or the prescribed person shall not, by reason of so coming, be deemed to be assets or effects at the place in which that Committee or the prescribed person is stationed and it shall not be necessary by reason thereof that representation be taken out in respect of that property for that place.

128I. *Saving of rights of representative.*—After the Committee has deposited with the prescribed person the surplus of the property of any deceased officer or warrant officer under sub-section (6) of section 128B, any representative of the deceased or any Administrator General, shall, as regards any property of the deceased not collected by the Committee and not forming part of the aforesaid surplus, have the same rights and duties as if section 128B had not been enacted.

128J. *Application of sections 128B to 128I to lunatics, etc.*—The provisions of sections 128B to 128I shall, so far as they can be made applicable, apply in the case of an officer or warrant officer of the Indian Air Force who, notwithstanding anything contained in the Indian Lunacy Act, 1912 (IV of 1912), is ascertained in the prescribed manner to be insane, or, who, being on active service, is officially reported missing, as if he had died on the day on which his insanity is so ascertained or, as the case may be, on the day on which he is officially reported missing:



Provided that in the case of an officer or warrant officer so reported missing no action shall be taken under sub-sections (2) to (5) of section 128B or under section 128C until such time as he is officially presumed to be dead.

**128K. Appointment of Standing Committee of Adjustment when officers die or desert while on active service.**—When an officer or warrant officer dies or deserts while on active service, the references in the foregoing provisions of this Chapter to the Committee shall be construed as references to the Standing Committee of Adjustment, if any, appointed in this behalf in the manner prescribed.

**128L. Interpretation.**—For the purposes of this Chapter—

(1) the expression 'service and other debts in camp or quarters' includes money due as air force debts, namely, sums due in respect of, or of any advance in respect of—

- (a) quarters;
- (b) mess, band, and other service accounts;
- (c) air force clothing, appointments and equipments, not exceeding a sum equal to three months' pay of the deceased, and having become due within eighteen months before his death;

(2) 'representation' includes probate and letters of administration with or without the will annexed, and a succession certificate, constituting a person the executor or administrator of the estate of a deceased person or authorising him to receive or realize the assets of a deceased person;

(3) 'representative' means any person who has taken out representation but does not include an Administrator General."

**6. Amendment of sections 15, 16 and 17, Act III of 1913.**—In the Administrator General's Act, 1913,—

(i) to section 15, after the words and figures "Regimental Debts Act, 1893" the words and figures "the Indian Army Act, 1911 (VIII of 1911) or the Indian Air Force Act, 1932 (XIV of 1932)" shall be added;

(ii) in section 16, after the words and figures "the Regimental Debts Act, 1893" the words and figures "the Indian Army Act, 1911 (VIII of 1911) or the Indian Air Force Act, 1932 (XIV of 1932)" shall be inserted; and

(iii) in section 17,—

(a) after the words and figures "the Regimental Debts Act, 1893", at both places where they occur, the words and figures "the Indian Army Act, 1911, or the Indian Air Force Act, 1932" shall be inserted; and

(b) after the words "subject to the Army Act or the Air Force Act" the words and figures "or of an Indian commissioned officer subject to the Indian Army Act, 1911 (VIII of 1911) or of an officer or warrant officer of the Indian Air Force subject to the Indian Air Force Act, 1932 (XIV of 1932)" shall be inserted.

# THE ARMY ACT, 1950

No. XLVI OF 1950

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Vol I*

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Price annas 5 or 8d.

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## THE SCHEDULE

**THE ARMY ACT, 1950****(Act XLVI of 1950)****CHAPTER I****PRELIMINARY**

**1. Short title and commencement.**—(1) This Act may be called the Army Act, 1950.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

**NOTE**

The AA came into force on 22 July 1950. See Government of India. Notification S.R.O. 120 dated 22 July 50 (Reproduced in Part IV).

**2. Persons subject to this Act.**—(1) The following persons shall be subject to this Act wherever they may be, namely:—

- (a) officers, junior commissioned officers and warrant officers of the regular Army;
- (b) persons enrolled under this Act ;
- (c) persons belonging to the Indian Reserve Forces;
- (d) persons belonging to the Indian Supplementary Reserve Forces when called out for service or when carrying out the annual test;
- (e) officers of the Territorial Army, when doing duty as such officers and enrolled persons of the said Army when called out or embodied or attached to any regular forces, subject to such adaptations and modifications as may be made in the application of this Act to such persons under sub-section (1) of section 9 of the Territorial Army Act, 1948 (LVI of 1948);
- (f) Persons holding commissions in the Army in India Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;
- (g) officers appointed to the Indian Regular Reserve of Officers, when ordered on any duty or service for which they are liable as members of such Reserve forces;
- (h) (Omitted).<sup>1</sup>
- (i) persons not otherwise subject to military law, who, on active service, in camp, on the march or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, the regular Army.

(2) Every person subject to this Act under clauses (a) to (g)<sup>2</sup>, sub-section (1) shall remain so subject until duly retired, discharged, released, removed, dismissed or cashiered from the service.

**NOTES**

1. sub-sec. (1).—“Wherever they may be”; The AA which is a special law has extra-territorial application in as much as a person subject to it continues to be so subject at all times irrespective of the place where he is serving e.g. whether he is in India or otherwise. His liability to punishment under the Act therefore remains unaffected by the place where he commits the offence.

<sup>1</sup> Omitted by adaptation of Laws (No. 3) Order, 1956.

<sup>2</sup> Substituted by adaptation of Laws (No. 3) Order, 1956



2. Clause (a).—For the definition of ‘officer’, ‘JCO’, ‘WO’, and ‘Regular Army’ see AA s. 3(xviii), (xii), (xxiv) and (xxi) respectively.

3. Clause (b).—“Persons enrolled” see AA. ss. 13, 14 and 15.

4. Clause (c).—(The Indian Reserve forces consist of the Regular Reserve and the Supplementary Reserve). Persons belonging to the Indian Reserve forces are subject to the AA at all times until duly discharged or dismissed. S. 5 of the Indian Reserve Forces Act 1888 and rule 3B of Indian Reserve Forces Rules, 1925 refer.

5. Clause (d).—Indian Supplementary Reserve Force is no more in existence and there is no class of persons who are subject to the AA under this clause.

6. Clause (e).—The term ‘Officers of the Territorial Army’ includes JCOs of that Army as well: S. 2(b) of T. A. Act, 1948.

For the ‘adaptations and modifications’ made to AA, see rule 24 of the T.A. Act Rules, 1948 and Schedules II and IIA thereto (Reproduced in Part III).

7. Clause (f).—Army in India Reserve of Officers force is no more in existence and there is no class of officers subject to the AA under this clause.

8. Clause (g).—Personnel mentioned in this clause are subject to the AA only when ordered on duty or service for which they are liable as members of such reserve forces. Officers of the regular Army who retire on pension or gratuity have a liability to serve in the Reserve until they reach the specified age limits.

9. Clause (i).—Persons commonly known as ‘followers’ are not ordinarily subject to AA unless they have been enrolled under it, but in the interest of discipline and security it is obviously necessary that they and other civilians who accompany any portion of the regular Army should be subject to military discipline on active service and in certain other circumstances. This clause provides for such subjection.

All persons, including civilian officers and subordinates, who are subject to AA under this clause are deemed to be of a rank inferior to that of a non-commissioned officer, unless the Central Government have under AA. s. 6 (1) issued a notification regarding the manner in which such persons shall be so subject: see AA. s. 6, and Government of India Notification S.R.O. 325 of 1975 (reproduced in part IV) under which civilian Government servants are classified as Officers, JCOs, WOs and NCOs according to their total monthly emoluments; the status so conferred is personal, and does not give them power of command over others nor does it make them ‘superior officers’ within the meaning of the AA.

Further subjection of civilians in Government service to AA under this clause does not preclude their being dealt with departmentally under their civil, disciplinary regulations but if they are dealt with under military law, the procedure must be in accordance with the AA and AR.

10. “Active service”: see AA. s. 3(i).

Regular Army: see AA. s. 3(xxi).

11. Sub-sec. (2)—A person subject to the AA cannot terminate his subjection unilaterally: cessation of such subjection must take place in one of the ways mentioned in this sub-sec.

12. ‘Duly retired’, ‘discharged’ etc.—See chapter IV of the AA and ARs 13 to 18. For cashiering and dismissal as a court-martial sentence see AA. s 71 and AR 168. If a sentence of dismissal is combined with a suspended sentence of imprisonment, the dismissal does not take effect until so ordered by the authority or officer specified in AA. s. 182. Also see AA, s 190(1).

### **3. Definitions.**—In this Act, unless the context otherwise requires,

- (i) “active service”, as applied to a person subject to this Act, means the time during which such person—
  - (a) is attached to, or forms part of, a force, which is engaged in operations against an enemy, or
  - (b) is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or
  - (c) is attached to or forms part of a force which is in military occupation of a foreign country;
- (ii) “civil offence” means an offence which is triable by a criminal court;
- (iii) “civil prison” means any jail or place used for the detention of any criminal prisoner under the Prisons Act, 1894 (IX of 1894), or under any other law for the time being in force;

- (iv) (“Chief of the Army Staff” means the officer commanding the regular Army;)<sup>1</sup>
- (v) “commanding officer”, when used in any provision of this Act, with reference to any separate portion of the regular Army or to any department thereof, means the officer whose duty it is under the regulations of the regular Army, or in the absence of any such regulations, by the custom of the service to discharge with respect to that portion of the regular Army or that department as the case may be, the functions of a commanding officer in regard to matters of the description referred to in that provision;
- (vi) “corps” means any separate body of persons subject to this Act, which is prescribed as a corps for the purposes of all or any of the provisions of this Act;
- (vii) “court-martial” means a court-martial held under this Act;
- (viii) “criminal court” means a court of ordinary criminal justice in any part of India; (<sup>2</sup>)
- (ix) “department” includes any division or branch of a department ;
- (x) “enemy” includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to military law to act;
- (xi) “the Forces” means the regular Army, Navy and Air Force or any part of any one or more of them;
- (xii) “junior commissioned officer” means a person commissioned, gazetted or in pay as a junior commissioned officer in the regular Army or the Indian Reserve Forces, and includes a person holding a junior commission in the Indian supplementary Reserve Forces, or the Territorial Army (<sup>3</sup>) who is for the time being subject to this Act;
- (xiii) “military custody” means the arrest or confinement of a person according to the usages of the service and includes naval or air force custody;
- (xiv) “military reward” includes any gratuity or annuity for long service or good conduct good service pay or pension and any other military pecuniary reward;
- (xv) “non-commissioned officer” means a person holding a non-commissioned rank or an acting non-commissioned rank in the regular Army or the Indian Reserve Forces and includes a non-commissioned officer or acting non-commissioned officer of the Indian supplementary Reserve Forces or the Territorial Army (<sup>3</sup>) who is for the time being subject to the Act;
- (xvi) “notification” means a notification published in the Official Gazette;
- (xvii) “offence” means any act or omission punishable under this Act and includes a civil offence as here-in-before defined,
- (xviii) “officer” means a person commissioned, gazetted or in pay as an officer in the regular Army, and includes—
  - (a) an officer of the Indian Reserve Forces;
  - (b) an officer holding a commission in the Territorial Army granted by the President with designation of rank corresponding to that of an officer of the regular Army who is for the time being subject to this Act ;

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<sup>1</sup> Substituted by Act No. 19 of 1955.

<sup>2</sup> Omitted by Act No. 13 of 1975.

<sup>3</sup> Omitted by Adaptation of Laws (No. 3) Order, 1956.

- (c) an officer of the Army in India Reserve of Officers who is for the time being subject to this Act ;
- (d) an officer of the India Regular Reserve of Officers who is for the time being subject to this Act ;
- (e) (Omitted)<sup>1</sup>;
- (f) in relation to a person subject to this Act when serving under such conditions as may be prescribed, an officer of the Navy or Air Force ;  
but does not include a junior commissioned officer, warrant officer, petty officer or non-commissioned officer;
- (xix) “prescribed” means prescribed by rules made under this Act ;
- (xx) “provost-marshal” means person appointed as such under section 107 and includes, any of his deputies or assistants or any other person legally exercising authority under him or on his behalf;
- (xxi) “regular Army” means officers, junior commissioned officers, warrant officers, non-commissioned officers and other enrolled persons who, by their commission, warrant, terms of enrolment or otherwise, are liable to render continuously for a term military service to the Union in any part of the world, including persons belonging to the Reserve Forces and the Territorial Army when called out on permanent service;
- (xxii) “regulation” includes a regulation made under this Act ;
- (xxiii) “superior officer”, when used in relation to a person subject to this Act, includes a junior commissioned officer, warrant officer and a non-commissioned officer; and, as regards persons placed under his orders, an officer, warrant officer, petty officer and non-commissioned officer of the Navy or Air Force;
- (xxiv) “warrant officer” means a person appointed, gazetted or in pay as a warrant officer of the regular Army or of the Indian Reserve Forces, and includes a warrant officer of the Indian Supplementary Reserve Forces or of the Territorial Army (....)<sup>1</sup> who is for the time being subject to this Act;
- (xxv) all words (except the word India)<sup>2</sup> and expressions used but not defined in this Act and defined in the Indian Penal Code (Act XLV of 1860) shall be deemed to have the meanings assigned to them in that Code.

#### NOTES

1. *Clause (i): Enemy*.—See clause (x).

2. Persons subject to the AA may be on active service even before embarkation for the seat of operations if the circumstances are such that they can reasonably be held to be attached to or form part of such a force as is specified in this clause or to be on the line of march to a country or place wholly or partly occupied by enemy.

A person is on the line of march from the time he parades for the original march until he arrives at his ultimate destination.

3. Termination of a state of war between the Union and an occupied enemy country would not *ipso facto* prevent troops occupying that country from being on active service for the purposes of this clause provided they are in fact occupying that foreign country. In order to ascertain whether such troops are ‘on active service’ or not, regard must be had to all the circumstances involved. Where there is any doubt as to whether or not troops are on active service for the purposes of this clause, a declaration should be made under AA. s. 9.

4. *Clause (ii): Offence*.—See clause (xvii).

*Criminal court*: see clause (viii).

5. *Clause (iii)*.—See notes to AA. s. 24.

<sup>1</sup> Omitted by the Adaptation of Laws (No. 3) Order, 1956.

<sup>2</sup> Added by Act 13 of 1975

6. Criminal prisoner means any prisoner duly committed to custody under the writ, warrant or order of any court or authority exercising criminal jurisdiction or by order of a court-martial: [The Prisons Act 1894, s. 3(2)].

7. *Clause (iv).*—The term ‘Commander in Chief’ was replaced by the term ‘Chief of the Army Staff’ w.e.f. 7 May 55; see The Commanders-in-Chief (change of Designation) Act, 1955 (No. 19 of 1955) and Govt. of India, Ministry of Defence Notification SRO 2/E dated 7 May 55.

*Regular Army.*—See clause (xxi).

8. *Clause (v).*—An officer as defined in clause (xviii) can be a Commanding Officer within the meaning of this clause.

It has been left to the Regs. or in their absence to the custom of the service to specify the officer whose duty it is to discharge the functions of a commanding officer in regard to any particular provisions; see Regs Army and notes to AA. s. 116.

9. *Clause (vi): Prescribed.*—See AR 187,

10. *Clause (vii).*—See notes to AA. s. 60.

11. *Clause (viii): India.*—See Art. (I) of the Constitution. See also notes to clause (ii) above.

12. *Clause (x).*—The term “enemy” would include a soldier ‘running amok’ see Regs Army para 351.

13. *Clause (xi).*—The term ‘the Forces’ means the Armed Forces of the Union referred to in Art 72(2) of the Constitution.

14. *Clause (xii).*—Regular Army: see clause (xxi).

“Commissioned, Gazetted or in pay” : existence of any one of these conditions makes him subject to the AA as a JCO.

15. *Clause (xiii).*—As to arrest and confinement and release therefrom, see Regs for the Army paras 391 to 397.

16. ‘Confinement’ would include confinement in the unit quarterguard or detention in barracks while undergoing a sentence of imprisonment under AA. s. 80 or 169(3) or detention under AA. s. 80.

17. *Clause (xiv).*—A war gratuity is thus a military reward but a medal or decoration is not.

18. A military reward can be forfeited in the circumstances specified in the rules governing it but not as a court-martial sentence.

19. *Clause (xv).*—As an acting NCO is legally a NCO within the meaning of this clause, the punishments specified in clauses (a), (b), (c) or (j) of AA. s. 80 cannot be awarded to him but he can be awarded a severe reprimand or reprimand under clause (g) of the said section or under clause (i) of AA. s. 71. But see note 14 to AA. s. 71.

Only attested persons are eligible for non-commissioned ranks: AA. s. 16.

20. *Clause (xvii).*—Every civil offence is deemed to be an offence against the AA. See AA. s. 69.

21. *Clause (xviii).*—An officer holds a commission from the date notified in the official gazette and not from the date on which the commission is issued to him.

For conditions prescribed under sub-clause (f) see AR 188.

The term ‘officer’ unlike the T A Act 1948, does not include a JCO.

22. *Clause (xxi).*—The distinction between the regular Army and other forces is that persons belonging to the regular Army are liable to serve continuously for a term in any part of the world. Reservists or TA personnel become a part of the regular Army only when called on permanent service under the circumstances provided in sub-sec. (d) and (e) of AA. s. 2 (1).

23. *Clause (xxii).*—The term ‘regulation’, would appear to include a non-statutory regulation.

24. *Clause (xxiii).*—Although an officer of the Navy or Air Force cannot exercise command in general over persons subject to the AA or be subject to command by such persons unless such officer is serving under prescribed conditions (clause (xviii); (f), an officer, WO etc. of the Navy or Air Force is a ‘superior officer’ as regards person placed under his command.

25. *Clause (xxiv).*—Indian supplementary Reserve Forces: see Note 5 to AA s. 2.

## CHAPTER II

## SPECIAL PROVISIONS FOR THE APPLICATION OF ACT TO CERTAIN CASES

**4. Application of Act to certain forces under Central Government.**—(1) The Central Government may by notification, apply, with or without modifications, all or any of the provisions of this Act to any force raised and maintained in India under the authority of that Government (\*\*)<sup>1</sup> and suspend the operation of any other enactment for the time being applicable to the said force.

(2) The provisions of this Act so applied shall have effect in respect of persons belonging to the said force as they have effect in respect of persons subject to this Act holding in the regular Army the same or equivalent rank, as the aforesaid persons hold for the time being in the said force.

(3) The provisions of this Act so applied shall also have effect in respect of persons who are employed by or are in the service of or are followers of or accompany any portion of the said force as they have effect in respect of persons subject to this Act under clause (i) of sub-section (1) of Section 2.

(4) While any of the provisions of this Act apply to the said force, the Central Government may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of the said force.

## NOTES

1. AA has been applied to the following forces :—

S. No.	Force	Gazette Notification No. and date	With or without modification
(i)	Assam Rifles	SRO 117 of 28 Mar 60 and 318 of 6 Dec. 62 as amended by SRO 325 of 31 Aug 77.	With modifications.
(ii)	Civil General Transport Companies	SRO 122 of 22 Jul 50 as amended by SRO 282 of 17 Aug 60.	With modifications.
(iii)	General Reserve Engineer Force	SROs 329 and 330 of 23 Sep 60	Without modifications
(iv)	Rashtriya Rifles	SRO 151 of 30 Jul 91	Without modifications

2. The equivalent ranks of these forces viz-a-viz regular Army are given in the SROs shown below:-

S. No.	Force	Gazette Notification No. and date
(i)	Assam Rifles	SRO 325 of 29 Sep 75.
(ii)	Civil General Transport Companies	SRO 1255 of 07 Nov 53 as amended by SRO 126 of 11 Apr 61.
(iii)	General Reserve Engineer Force	SROs 1001 of 20 May 61 as amended by SRO 993 of 04 May 62.

3. The above SROs have been reproduced in part IV of the manual.

5. (Omitted)<sup>1</sup>

<sup>1</sup> Omitted by the Adaptation of Laws (No. 2) Order, 1956.



**6. Special provision as to rank in certain cases.**—(1) The Central Government may by notification, direct that any person or class of persons subject to this Act under the [clause (i) of sub-section (1) of section 2]<sup>1</sup> shall be so subject as officers, junior commissioned officers, warrant officers or non-commissioned officers and may authorise any officer to give a like direction and to cancel such direction.

(2) All persons subject to this Act other than officers, junior commissioned officers, warrant officers and non-commissioned officers shall, if they are not persons in respect of whom a notification or direction under sub-section (1) is in force, be deemed to be of a rank inferior to that of a non-commissioned officer.

#### NOTES

1. See notes to AA. s. 2(1)(i).

2. See SRO 325 of 29 Sep 75 reproduced in part IV.

**7. Commanding officer of persons subject to military law under clause (i) of sub-section (1) of section 2.**—(1) Every person subject to this Act under [clause (i) of sub-section (1) of section 2]<sup>1</sup> shall, for the purposes of this Act be deemed to be under the commanding officer of the corps department or detachment, if any, to which he is attached, and, if he is not so attached, under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person for the time being is serving, or any other prescribed officer or if, no such officer is named or prescribed under the command of the said officer commanding the force.

(2) An officer commanding a force shall not place a person subject to this Act under [clause (i) of sub-section (1) of section 2] under the command of an officer of rank inferior to that of such person, if there is present at the place where such person is any officer of a higher rank under whose command he can be placed.

#### NOTES

1. Sub-sec. (1) has reference to the powers of a CO e.g. investigation by the CO, trial by SCM, summary proceedings under AA s. 80 and 85 etc.

2. For prescribed officer, see AR 189.

**8. Officers exercising powers in certain cases.**—(1) Whenever persons subject to this Act are serving under an officer commanding any military organisation not in this section specifically named and being in the opinion of the Central Government, not less than a brigade, that Government may prescribe the officer by whom the powers, which under this Act may be exercised by officers commanding armies, army corps, divisions and brigades, shall, as regards such persons, be exercised.

(2) The Central Government may confer such powers, either absolutely or subject to such restrictions, reservations, exceptions and conditions as it may think fit.

**9. Power to declare persons to be on active service**—Notwithstanding any thing contained in clause (i) of section 3, the Central Government may, by notification, declare that any person or class of persons subject to this act shall, with reference to any area in which they may be serving or with reference to any provision of this Act or of any other law for the time being in force, be deemed to be on active service within the meaning of this Act.

#### NOTES

Relevant SROs are reproduced in part IV.

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<sup>1</sup> Substituted by Act 56 of 1974.

## CHAPTER III

## COMMISSION, APPOINTMENT AND ENROLMENT

**10. Commission and appointment.**—The President may grant to such person as he thinks fit, a commission as an officer, or as junior commissioned officer or appoint any person as a warrant officer of the regular Army.

## NOTES

1. 'Such persons as he thinks fit': even an alien or a female may be granted a commission as an officer or JCO or appointed as a WO.

2. A commission or appointment is strictly speaking not a contract as its grant or termination/withdrawal is not legally dependent on the consent of the grantee.

**11. Ineligibility of aliens for enrolment.**— No person who is not a citizen of India shall except with the consent of the Central Government signified in writing, be enrolled in the regular Army :

Provided that nothing contained in this section shall bar the enrolment of the subjects of Nepal in the regular Army.

## NOTES

1. Regular Army see AA. s. 3(xxi).

2. The following persons can be enrolled.

(a) A citizen of India (see Arts 5-11 of the Constitution and Citizenship Act. 1955);

(b) A subject of Nepal;

(c) An alien, with the written consent of the Central Government;

(d) A female, though a citizen of India, a subject of Nepal or an alien who has obtained the written consent of the Central Government is only eligible for enrolment or employment in such corps., department etc., of or any service auxiliary to the regular Army as specified in AA. s. 12.

3. A non-eligible person can however be deemed to be duly enrolled under AA. s 15 if he satisfies the conditions set out therein.

4. **Enrolment Boys:** Being enrolled, the boys are subject to all the provisions of the AA and may legally be tried and punished by a court-martial or summarily. They may also be awarded minor punishments specified for boys. (see Regs Army para 443 (c) and item VI of the table annexed thereto).

The boys cannot be punished under AA for offences committed before enrolment.

**12. Ineligibility of females for enrolment or employment.**—No female shall be eligible for enrolment or employment in the regular Army, except in such corps, department, branch or other body forming part of or attached to any portion of, the regular Army as the Central Government, may, by notification in the Official Gazette, specify in this behalf:

Provided that nothing contained in this section shall affect the provisions of any law for the time being in force providing for the raising and maintenance of any service auxiliary to the regular Army or any branch thereof in which females are eligible for enrolment or employment.

## NOTES

1. This section has been enacted under the provisions of Art 16(3) of the constitution.

2. Department: see AA. s. 3(ix).

3. Regular Army: see AA. s. 3(xxi).

4. Law would seem to mean any law, ordinance, order, byelaw, rule or regulation passed or made by Parliament, any authority or person having power to make such a law, ordinance, order, byelaw, rule, or regulation. 'See Military Nursing Services (India) Ordinance (No. xxx) of 1943, under which Military Nursing Service has been raised and maintained as an auxiliary to the regular Army.

**13. Procedure before enrolling officer.**—Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled and shall put to him the questions set forth in the prescribed form of enrolment and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.

#### NOTES

1. Prescribed enrolling officer: see AR 7.

2. Prescribed forms of enrolment: see Appx I to ARs.

The conditions of service, in these forms, are embodied in the questions which are put to the person to be enrolled and his acceptance of these conditions is duly recorded therein.

3. A person enrolled into one corps or department can, in the circumstances specified in AR 10, be transferred from that corps/department to another corps/department without his consent.

4. A false answer to any question set forth in the prescribed form of enrolment is punishable under AA. s. 44.

**14. Mode of enrolment.**—If, after complying with the provisions of section 13, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if such officer perceives no impediment he shall sign and shall also cause such person to sign the enrolment paper, and such person shall thereupon be deemed to be enrolled.

**15. Validity of enrolment.**—Every person who has for the space of three months been in receipt of pay as a person enrolled under this Act and been borne on the rolls of any corps or department shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on the ground of any irregularity or illegality in his enrolment or on any other ground whatsoever; and if any person, in receipt of such pay and borne on the rolls as aforesaid, claims his discharge before the expiry of three months from his enrolment, no such irregularity or illegality or other ground shall, until he is discharged in pursuance of his claim affect his position as an enrolled person under this Act or invalidate any proceeding, act or thing taken or done prior to his discharge.

#### NOTES

1. The effect of this section is that if a person including the one ineligible for enrolment receives pay for three months or more as an enrolled person and has been borne on the rolls of any corps or department, without having been enrolled in accordance with the provisions of AA. ss. 13 and 14, he may be treated for all purposes as duly enrolled and subject to the AA. except that such a person can claim his discharge before the expiry of three months on any ground e.g. illegality or irregularity but that does not affect his being subject to the AA for the period he is so in receipt of pay and borne on the rolls as aforesaid, until his discharge. After the expiry of three months he cannot claim discharge on grounds of illegality or irregularity of enrolment.

2. Corps: see AR 187(i).

Department: see AA s. 3(ix).

**16. Persons to be attested.**— The following persons shall be attested namely :—

- (a) all persons enrolled as combatants;
- (b) all persons selected to hold a non-commissioned rank; and
- (c) all other persons subject to this Act as may be prescribed by the Central Government.

#### NOTE

Attestation involves no further liabilities beyond those assumed at enrolment but confers upon the attested person certain privileges. The discharge of an attested person can, as a rule, only be authorised by higher military authorities, while that of an enrolled person who has not been attested e.g. recruits and followers can be authorised by his CO. Only attested persons are eligible for non-commissioned rank see AR 8.

**17. Mode of attestation.**—(1) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his commanding officer in front of his corps or such portion thereof or such members of his department, as may be present, or by any other prescribed person.

(2) The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will bear true allegiance to the Constitution of India as by law established, and that he will serve in the regular Army and go wherever he is ordered by land, sea or air and that he will obey all commands of any officer set over him, even to the peril of his life.

(3) The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper and authenticated by the signature of the officer administering the oath or affirmation.

#### NOTES

1. For the prescribed form of oath or affirmation to be administered on attestation see AR 9(1) and for its translation in vernacular languages see notes to AR 9.

2. The proper authority to attest a person subject to the Act is generally his immediate CO who should do so in the ceremonial manner here indicated. For list of other “attesting officers” see AR 9(2).

## CHAPTER IV

### CONDITIONS OF SERVICE

**18. Tenure of service under the Act.**—Every person subject to this Act shall hold office during the pleasure of the President.

#### NOTE

This section merely reiterates the constitutional position set out in Art-310(1) of the Constitution. The President's powers to terminate the service by way of dismissal, removal or otherwise, of any person subject to the AA under the said Art are unfettered and no show cause notice is necessary.

**19. Termination of service by Central Government.**— Subject to the provisions of this Act and the rules and regulations made thereunder, the Central Government may dismiss or remove from the service, any person subject to this Act.

#### NOTES

1. The section empowers the Central Government to dismiss or remove from service any person subject to the AA but only in accordance with the provisions of the AA or of any rules or regulations made thereunder; the only legal restrictions are contained in ARs 13-A 14 and 15 which require a show cause notice to be served upon an officer before his service is terminated on grounds of his failure to qualify at an examination or course, misconduct or inefficiency. Such show cause notice may be dispensed with by the Central Govt. when it considers it inexpedient or impracticable to do so or when the officer is already convicted by a criminal court for the misconduct. AR 15-A provides for the release of an officer on medical grounds, which is to be carried out on the recommendations of a Medical Board.

2. Dismissal under this section, AA. s. 18 or 20 is not a punishment as under AA. s. 71 but merely amounts to termination of a person's commission/service without his consent. Removal is a less grave form of dismissal.

3. For the date an order of dismissal or removal under this section takes effect, see AR 18 and for the date a sentence of cashiering or dismissal awarded by a court-martial takes effect, see AR 168.

4. The competent authority cannot make the dismissal/removal under this section or discharge under AR 13 retrospective nor can such valid dismissal etc., be cancelled without the person's consent.

5. An officer or JCO holding a substantive rank cannot be reduced to a lower substantive rank though he can be dismissed or removed under this section.

6. As to furnishing a JCO, WO or OR who is dismissed or removed with a discharge certificate, see A.A. s. 23 and AR 12. See also Regs for the Army para 169.

**20. Dismissal, removal or reduction by the (Chief of the Army Staff)<sup>1</sup> and by other officers.**—(1) The (Chief of the Army Staff)<sup>1</sup> may dismiss or remove from the service any person subject to this Act other than an officer.

(2) The (Chief of the Army Staff)<sup>1</sup> may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer.

(3) An officer having power not less than a brigade or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a junior commissioned officer.

(4) Any such officer as is mentioned in sub-section (3) may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer under his command.

(5) A warrant officer reduced to the ranks under this section shall not, however, be required to serve in the ranks as a sepoy.

(6) The commanding officer of an acting non-commissioned officer may order him to revert to his permanent grade as a non-commissioned officer, or if he has no permanent grade above the ranks, to the ranks.

(7) The exercise of any power under this section shall be subject to the said provisions contained in this Act and the rules and regulations made thereunder.

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<sup>1</sup>Substituted by Act No. 19 of 1955



## NOTES

1. For the date an order of dismissal or removal under this section takes effect, see AR 18, and for the date a sentence of dismissal awarded by a court-martial takes effect, see AR 168.

2. The difference between dismissal and discharge is that the former does, while the latter does not, imply culpability. (Further dismissal involves the forfeiture of claim to any pension or gratuity which may have been earned. Discharge does not involve such forfeiture. See Regs Pension Part II Regs 14 and. 195).

3. All persons sentenced to imprisonment (except persons sentenced by court-martial whose sentences are suspended) and such persons sentenced to imprisonment, as it is not desired to retain in the service will, if not dismissed by the sentence of a court-martial be dismissed under this section or under AA. s. 19; see Regs Army paras 167 and 423 also. COs will use their discretion in applying for, the dismissal and the higher authorities their discretion in ordering it. Such a dismissal should not be applied for, or at any rate should not be put into effect, until the convict or prisoner sentenced by court-martial has been committed to a civil prison (AR 168). In the case of a sentence passed by a civil court, the application should, if the dismissal is desired, be made as soon as possible after the sentence has been passed by the civil court. In special cases, a prisoner whom it is not desired to retain in the service may be discharged instead of being dismissed.

4. As to furnishing a JCO, WO or OR who is dismissed with a discharge certificate, see AA. s. 23 and AR 12 and Regs Army para 169.

5. A WO or NCO can be reduced in rank under sub-sec (4), but if the ground is some misconduct which is an offence against the Act, he should, as a rule, be brought to trial by a court-martial.

6. For ranks see Regs Army para, 131. Lance and acting rank is a matter to be dealt with by the CO.

7. When an acting NCO has been punished by court-martial for an offence, and such punishment does not involve reduction or reversion, his CO can revert him to his permanent grade, not as further punishment, but because the proceedings show him to be unfit to hold his appointment.

8. For CO see AA. s. 3 (v).

**21. Power to modify certain fundamental rights in their application to persons subject to this act.**—Subject to the provisions of any law for the time being in force relating to the regular Army or to any branch thereof, the Central Government may, by notification, make rules restricting to such extent and in such manner as may be necessary the right of any person subject to this Act—

- (a) to be a member of, or to be associated in any way with, any trade union or labour union, or any class of trade or labour unions or any society, institution or association, or any class of societies, institutions or associations;
- (b) to attend or address any meeting or to take part in any demonstration organised by any body of persons for any political or other purposes;
- (c) to communicate with the press or to publish or cause to be published any book, letter or other document.

## NOTES

This section has been enacted under the authority of Article 33 of the Constitution which empowers Parliament to restrict or abrogate the fundamental rights conferred by the Constitution in their application to 'the Armed Forces'. It gives the Central Government power to make rules restricting the three of the fundamental rights conferred by Art 19 of the Constitution. The restrictions imposed by the Government under this rule making power will be found in ARs 19, 20 and 21.

Other instances where fundamental rights have been modified in pursuance of Art 33 are:—

- (a) Protection from double jeopardy: Art 20(2) of the Constitution has been abrogated by AA. s. 127<sup>1</sup>.
- (b) The right to be defended by legal practitioner of his choice provided vide Art 22(1) of the Constitution has been restricted by ARs 96 and 129.

**22. Retirement, release or discharge.**— Any person subject to this Act may be retired, released or discharged from the service by such authority and in such manner as may be prescribed.

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<sup>1</sup>Omitted by Act No. 37 of 1992

## NOTES

1. A person subject to the AA continues to be so subject until he is duly retired, released, removed, discharged, dismissed or cashiered from the service: AA. s. 2(2).
2. For cashiering, dismissal and removal, see AA. ss. 19, 20 and 71(d), (e) and notes thereto.
3. As to retirement and resignation of commission of officers, see ARs 14, 15 and 18(1) and Regs Army para 103.
4. Though regulations may prescribe age limits for compulsory retirement in respect of different ranks, every person subject to the AA holds office during the pleasure of the President and has thus no right to be kept in service till he reaches such age limit.
5. 'Released' : see AR 16.
6. For authorities competent to authorised discharge see AR 13 and table annexed thereto. The discharge of a person who is under the conditions of his enrolment entitled to be discharged must be authorised and completed with all convenient speed (AR 11) by the proper authorities (AR 13) unless the Central Government has by notification suspended the said entitlement (AR 11).
7. A valid discharge cannot be cancelled without the consent of the discharged person [AR 11(2)] and as such cancellation in effect amounts to re-enrolment.
8. Applications for discharge will be made on IAFY-1948.
9. As to furnishing a person who is discharged with a discharge certificate (IAFY-1949) see AA.s. 23. AR 12 and Regs for the Army para 169.
10. For the date discharge takes effect see AR 18(2).

**23. Certificate on termination of service.**—Every junior commissioned officer, warrant officer, or enrolled person who is dismissed, removed, discharged, retired or released from the service shall be furnished by his commanding officer with a certificate, in the language which is the mother tongue of such person and also in the English language setting forth—

- (a) the authority terminating his service;
- (b) the cause for such termination; and
- (c) the full period of his service in the regular Army.

## NOTES

1. See AR 12 and Regs for the Army para 169.
2. An officer is not entitled to be furnished with a discharge certificate on termination of his commission.

**24. Discharge or dismissal when out of India.**—(1) Any person enrolled under this Act who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled or ordered to be discharged, is serving out of India, and requests to be sent to India, shall, before being discharged, be sent to India, with all convenient speed.

(2) Any person enrolled under this Act who is dismissed from the service and who, when he is so dismissed, is serving out of India, shall be sent to India with all convenient speed.

(3) When any such person as is mentioned in sub-section (2) is sentenced to dismissal combined with any other punishment, such other punishment, or, in the case of a sentence of imprisonment for life or imprisonment, a portion of such sentence may be inflicted before he is sent to India.

(4) For the purposes of this section, the word “discharge” shall include release, and the word “dismissal” shall include removal.

**NOTES**

1. When an enrolled person's entitlement to be discharged or released accrues when he is out of India, he must, if he so requests, be sent to India for being discharged or released; in other words, the discharge/release must then be carried out in India. An enrolled person can however, be dismissed or removed from the service when serving out of India.

2. Sub-sec. (3) is permissive and must be read with AA. ss. 168-169 and 171 which provide for the infliction of sentences of imprisonment passed by courts-martial. The result is that, unless the sentence is one of imprisonment which is to be undergone in military custody or a military prison under AA. s. 169 or in regard to which an order for its infliction or partial infliction in local civil custody has been made under AA. s. 171. A prisoner cannot legally be kept abroad to undergo his imprisonment, but must be sent to a civil prison in India where it can be inflicted in accordance with this Act. Persons sentenced to imprisonment, which is to be undergone in a civil prison and where no order has been made under AA. s. 171 may be kept temporarily in military custody, military prison or other fit place under AA. s. 170.

3. On active service, however, a sentence of imprisonment may be carried out in such place as the officer commanding, the forces in the field may from time to time appoint: AA. s. 169(4).

4. Persons sentenced to dismissal and imprisonment can legally be retained in such a place to undergo the whole or any part of their terms of imprisonment before being sent to India under sub-sec (3).

## CHAPTER V

## SERVICE PRIVILEGES

**25. Authorised deductions only to be made from pay.**—The pay of every person subject to this Act due to him as such under any regulation for the time being in force shall be paid without any deduction other than the deductions authorised by or under this or any other act.

## NOTES

1. The term 'pay' means the rate of pay with increases, if any, for length of service, to which a person subject to the AA. is entitled by reason of his rank, appointment, trade group or trade classification, and includes additional remuneration such as qualification pay, proficiency pay and the various forms of additional pay. All other emoluments are "allowances", which, as the word itself suggests, are purely discretionary and may be withdrawn at any time.

2. It is illegal to make deductions which are not authorised and the unlawful detention of pay is an offence under AA. s.61.

3. 'Due to him as such', means earned by but not paid to him.

4. Under any regulation for the time being in force, such a regulation need not be a statutory one; (see AA.s.3(xxii)).

5. For deductions authorised by or under the Act: See AA. ss. 90-91 and AR 205.

6. Instances of deductions authorised by or under any other Act are to be found in the Income Tax Act or the rules made by the Central Government in pursuance of AA. s. 4 of the Indian Reserve Forces Act, 1888 under which a reservist who fails to appear for training etc., or takes his discharge between trainings may be deprived of any arrears of pay and allowances due to him.

**26. Remedy of aggrieved persons other than officers.**—(1) Any person subject to this Act other than an officer who deems himself wronged by any superior or other officer may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the officer commanding the same.

(2) When the officer complained against is the officer to whom any complaint should, under, sub-section (1), be preferred, the aggrieved person may complain to such officer's next superior officer.

(3) Every officer receiving any such complaint shall make as complete an investigation into it as may be possible for giving full redress to the complainant; or, when necessary, refer the complaint to superior authority.

(4) Every such complaint shall be preferred in such manner as may from time to time be specified by the proper authority.

(5) The Central Government may revise any decision by the (Chief of the Army Staff)<sup>1</sup> under sub-section (2), but, subject thereto, the decision of the (Chief of the Army Staff)<sup>1</sup> shall be final.

## NOTES

1. For further information regarding complaints and petitions generally, see Regs for the Army Para 364.

2. To come within this section or AA. s. 27, the complaint must be that the complainant has been denied or deprived of something to which he has a military right. A non-regular officer applicant for a permanent regular commission has a right to have his application fairly considered but has no right to be granted such a commission, consequently he cannot complain under AA. s. 27 if his application is refused unless he can produce some evidence that his application was not properly considered. Similarly a JCO or OR who is refused compassionate leave or a compassionate posting has no right of complaint under this section unless he can produce some evidence of improper motive for the refusal of leave, etc.

3. Complaints may be made respecting such matter, but can be made by an individual only. The combined complaint of several can never be permissible, but should not, if well founded, be treated as mutinous, where it is plain that the only object of those making the complaint is to procure redress of the matter by which they think themselves wronged.

<sup>1</sup>Substituted by Act No. 19 of 1955

4. A person can only complain once under this section in respect of any such matter.

5. A complaint cannot legitimately be preferred to a superior officer except in the regular course defined by this section. The channels through which complaints must be preferred are specified in Regs for the Army para 364, and it is only where the immediate superior refuses or unnecessarily delays to redress or forward the complaint that direct application can be made to higher authority. The officer in question ought to be informed of the application being made to his superior. For definition of 'officer' and 'superior officer' see AA. s. 3(xviii) and (xxiii) respectively.

6. The authority competent to dispose finally of the matter, complained of is the officer who, in pursuance of regulations or the custom of the service, is authorised to dispose of that matter. As a rule, he is the next superior officer to the officer against whom the complaint is made. If however, a person thinks himself wronged by his commanding officer in respect of his complaint not being redressed, it has been held that he may complain to the brigade commander.

7. A false accusation or false statement made in preferring a complaint under this section or AA. s. 27 is punishable under AA. s. 56(b); but the mere fact that a complaint appears to be baseless, or even frivolous, does not render the maker liable to punishment. As to the repetition of baseless complaints, or the submission of complaints in disrespectful language, see notes to AA. s. 63.

8. The persons to whom this section applies have no right to petition to the Central Government on matters arising out of their military service.

9. For petition against order, finding or sentence of court-martial: see AA. s. 164 and notes thereto.

**27. Remedy of aggrieved officers.**—Any officer who deems himself wronged by his commanding officer or any superior officer and who on due application made to his commanding officer does not receive the redress to which he considers himself entitled, may complain to the Central Government in such manner as may from time to time be specified by the proper authority.

#### NOTES

1. It is the custom of the service to forward every complaint through the CO of the unit, and an officer would not be justified in deviating from this course, unless the CO should refuse, or unreasonably delay, to forward it. In such a case, an officer, on addressing himself directly to higher authority, should apprise his CO of his doing so, and should observe in the channel of approach to the Central Government each intermediate gradation of command in so far as he is concerned.

2. CO: see AA. s. 3(v);

Superior Officer: see AA. s. 3 (xxiii).

3. Deems himself wronged: see note 2 to AA. S. 26.

4. This sec is not available to officers seconded for service with a civil department of a State, in respect of matters arising in the course of seconded employment.

5. Although the complaint is to the Central Government an intermediate authority is not debarred from expressing his own view of the case, and such an expression of opinion may even in some cases suffice to render further steps unnecessary.

6. See also notes 7 and 9 to AA. s. 26.

**28. Immunity from attachment.**—Neither the arms, clothes, equipment, accoutrements or necessities of any person subject to this Act, nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue officer in satisfaction of any decree or order enforceable against him.

#### NOTES

1. The words "civil or revenue court" in this section do not include a criminal court. The section does not afford protection against a distress warrant issued under s. 421 of Cr PC: but the amount in respect of which the distress warrant is issued should be paid by the competent authority ordering deductions from the individual's pay and allowances under AA. ss. 90(f) or 91(h) as the case may be.

2. As to action to have an order of attachment set aside; see Regs Army para 532.

**29. Immunity from arrest for debt.**—(1) No person subject to this Act shall, so long as he belongs to the Forces, be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue court or revenue officer.

(2) The judge of any such court or the said officer may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section and may, by warrant under his hand, discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no court-fee shall be payable by the complainant.

**NOTE**

The privilege is from arrest on civil or revenue process. There is no privilege from arrest on any criminal process except as provided in ss. 45 and 475 of the Cr PC. The remedy for an improper arrest is to apply to the court on whose process the arrest took place or to apply for a writ of habeas corpus.

**30. Immunity of persons attending courts-martial from arrest.**—(1) No presiding officer or member of a court-martial, no judge-advocate, no party to any proceeding before a court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial shall, while proceeding to, attending, or returning from, a court-martial, be liable to arrest under civil or revenue process.

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial.

**31. Privileges of reservists.**—Every person belonging to the Indian Reserve Forces shall, when called out for or engaged in or returning from, training or service, be entitled to all the privileges accorded by sections 28 and 29 to a person subject to this Act.

**NOTE**

It would appear that persons belonging to the Indian Reserve Forces, though subject to the AA at all times would not enjoy the privileges conferred by AA. ss. 28 and 29 except in the circumstances mentioned in this section.

**32. Priority in respect of army personnel's litigation.**—(1) On the presentation to any court by or on behalf of any person subject to this Act of a certificate from the proper military authority of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such person arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

(2) The certificate from the proper military authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No fee shall be payable to the court in respect of the presentation of any such certificate, or of any application by or on behalf of any such person for priority for the hearing of his case.

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for its inability to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.



(5) If in any case a question arises as to the proper military authority qualified to grant such certificate as aforesaid, such question shall at once be referred by the court to an officer having power not less than a brigade or equivalent commander whose decision shall be final.

#### NOTES

1. For orders as to the speedy disposal of suits by or against officers or soldiers who have obtained leave of absence for the purposes of the suit see Regs for the Army para 536.

2. The Indian Soldiers Litigation Act, 1925 (Act IV of 1925), (reproduced in part IV) provides, among other things, for the postponement, when necessary in the interest of justice, of proceedings pending before a Civil or Revenue Court in India to which any person subject to AA serving under "special conditions" (see s. 3 of the Indian Soldiers Litigation Act) is a party when such person is unable to appear in person or is not represented by any person duly authorised to appear, plead or act on his behalf. This concession, however, does not necessarily extend to pre-emption cases or to cases where the soldier's interests are identical with those of any other party to the proceedings and are adequately represented by such other party or are merely of a formal nature.

3. Govt. of India, Ministry of Home Affairs while listing out the service privileges (AA. ss. 28-32) have issued instructions to the State Govts. to accord priority in respect of Army personnel's litigation. See Regs Army para 536 and appendix 'R' to Regs for the Army.

4. For form of appointment of attorney, see Regs for the Army para 534.

5. A power of attorney to institute or defend a suit executed by a person subject to the AA is not chargeable with any court fee. See Regs for the Army para 535.

6. If the case cannot be disposed of within the period of leave granted, the civil officer concerned may extend leave for such period as will admit of the receipt of a reply to an application to the OC unit for the necessary extension of leave. The civil officer will report to the OC unit any grant of leave sanctioned by him. See Regs for the Army para 537.

**33. Saving of rights and privileges under other laws.**—The rights and privileges specified in the preceding sections of this Chapter shall be in addition to, and not in derogation of, any other rights and privileges conferred on persons subject to this Act or on members of the regular Army, Navy and Air Force generally by any other law for the time being in force.

#### NOTES

1. The privileges specified in AA. ss. 25-32 are in addition to certain others which have been conferred on members of 'the Forces' by other Acts. A few examples of such privileges are:

- (a) All Govt. pensions (including military pensions) are immune from attachment in the execution of the decrees of civil courts; s. 11 of pensions Act 1871, proviso (g) to s. 60 of Code of Civil Procedure 1908.
- (b) Receipts for pay or allowances of NCOs, or Sepoys when serving in such capacity need not be stamped; Indian Stamp Act, schedule I.
- (c) All officers, JCOs, WOs and OR of the regular Army on duty or on the march as well as their authorised followers, families, horses, baggage and transport are exempt from all tolls except certain tolls for the transit of barges etc., along canals: s. 3 of Indian Tolls (Army and Air Force) Act, 1901.

**CHAPTER VI****OFFENCES**

**34. Offences in relation to the enemy and punishable with death.**—Any person subject to this Act who commits any of the following offences; that is to say,—

- (a) shamefully abandons or delivers up any garrison, fortress, post, place or guard, committed to his charge, or which it is his duty to defend, or uses any means to compel or induce any commanding officer or other person to commit any of the said acts; or
- (b) intentionally uses any means to compel or induce any person subject to military, naval or air force law to abstain from acting against the enemy, or to discourage such person from acting against the enemy; or
- (c) in the presence of the enemy, shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice; or
- (d) treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against the Union; or
- (e) directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies ; or
- (f) treacherously or through cowardice sends a flag of truce to the enemy; or
- (g) in time of war or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports calculated to create alarm or despondency; or
- (h) in time of action leaves his commanding officer or his post, guard, picquet, patrol or party without being regularly relieved or without leave; or
- (i) having been made a prisoner of war, voluntarily serves with, or aids the enemy; or
- (j) knowingly harbours or protects an enemy not being a prisoner; or
- (k) being a sentry in time of war or alarm, sleeps upon his post or is intoxicated; or
- (l) knowingly does any act calculated to imperil the success of the military, naval or air forces of India or any forces co-operating therewith or any part of such forces;

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

**NOTES**

1. Offences under this section should not be dealt with summarily under AA. ss. 80, 83, 84 or 85; also see Regs Army para 451.

Because the maximum punishment for offences under this section is death.

- (a) a summary of evidence must be taken.
- (b) a plea of guilty cannot be accepted [AR 52(4)].
- (c) the trial should not take place before a DCM/SCM

2. 'Subject to this Act': see AA. s. 2.

3. Clause (a): '*Shamefully abandons*', etc.—(a) This offence can only be committed by the person in charge of the garrison, post, etc., and not by the subordinates under his command. The surrender of a place by an officer charged with its defence can only be justified by superior's orders or the utmost necessity, such as want of provisions or water the absence of hope of relief, and the certainty or extreme probability that no further efforts could prevent the place with its garrison, their arms and ammunition, falling into the hands of the enemy.

- (b) It must be proved that the accused had no necessity to surrender or abandon the post before a conviction can be obtained. Particulars of a charge under this clause must detail some circumstances which make abandonment in a military sense shameful. 'Shameful' means a positive and disgraceful dereliction of duty and not merely negligence or misapprehension or error of judgment.
- (c) 'Post' includes any point or position (whether fortified or not) which a detachment may be ordered to hold; and the abandonment of a post would also include the abandonment of a siege if there were no circumstances to warrant such a measure. It has not the same meaning as in clauses (h) and (k) or AA.s. 36 (c) or (d), where it has reference to the position of an individual.

4. Clause (b) : '*intentionally*'.—As a state of mind (e.g. intention, knowledge) is not capable of positive proof, the court may infer intention from the circumstances proved in evidence. As a general rule, a person is presumed in law to have intended the natural and probable consequences of his act. A court may also presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of events and human conduct. See IEA. s. 114.

5. *Enemy*—See AA. s. 3 (x).

6. Clause (c): '*Shamefully*'.—(a) The particulars of the charge must show the circumstances which make the act in a military sense shameful; see note 3(b) above.

(b) The presence of the enemy must be near at hand and a soldier not in the forward area could not be convicted of an offence if, for example, he casts away his arms during an air raid.

(c) *Enemy* : see AA. s. 3 (x). The term includes any person in arms against whom it is the duty of a person subject to military law to act. A person subject to the AA, therefore, who, when a comrade 'runs amok', shows cowardice by refraining from acting against him is liable to trial under this clause. See also Regs Army para 348.

7. '*Misbehaves*'.—(a) This means that the accused, from an unsoldier-like regard for his personal safety, in the presence of the enemy, failed in respect of some distinct and feasible duty imposed upon him by a specified order or regulation, or by the well-understood custom of the service, or by the requirements of the case, as applicable to the position in which he was placed at the time. Misbehaviour of any kind not evidencing cowardice cannot be charged under the last sentence of this clause.

(b) Where there is evidence that an accused has committed some other offence which is specifically mentioned in the Act as under clause (a) or (b) or AA. s. 38(1) such an offence should be charged in preference to a charge under this clause.

8. Clause (d) : '*Treacherously*'.—(a) see note 9(a) and (b) below.

(b) If there is no evidence of treachery, the charge should be laid under AA. s. 35(b).

(c) In a charge under this clause, it must be proved that the intelligence did in fact reach the enemy.

9. Clause (f) : '*Treacherously*' or '*through cowardice*'.—(a) Treacherously implies an intention to assist the enemy and must be carefully distinguished from 'through cowardice' which occur in this clause. The intention to help the enemy is an essential ingredient of the offence of treachery and must be proved before a conviction can be sustained.

(b) The particulars of the charge must show the circumstances which indicate the treachery or cowardice. If there is no treachery or cowardice, the charge should be laid under AA. s. 35(c).

(c) *Enemy* : see AA. s. 3(x).

10. Clause (g) : '*Intentionally*'.—See note 4 above.

11. '*Occasions a false alarm*'.— The particulars of the charge must set out briefly the means whereby the alarm was caused.

12. '*Spreads reports*'.— The particulars of the charge must detail the reports alleged to have been spread, and should indicate how they were calculated to create alarm or despondency. It is not necessary to aver or prove that the reports were false indeed the truth may increase the offence; nor is it necessary to

show that any effect was actually produced by the reports spread; it would, however, seldom be expedient to try an officer or soldier under this section for reports which could not be shown to have had some effect. The offence may be committed either with reference to the troops with whom the offender is serving, or with reference to the inhabitants of the country. When the false alarm is occasioned or such reports are spread otherwise than in time of war or during any military operation, the charge should be framed under AA. s. 36(e) which makes punishable such spreading of reports etc., even though through neglect.

13. *Camp*.—Includes a bivouac and any quarters, shelter or other place where troops are temporarily located.

14. *Clause (h) : Commanding Officer*.—See AA. s. 3 (v).

15. *'Post'*.—(a) When used with respect to an individual as in this clause and clause (k), means the position or place in which it may be the duty of a person subject to the AA to be, especially—when under arms. In determining what, in any particular case is “a post”, the court will use their military knowledge (AA. s. 134). The place in which the person was posted is material and should be stated in the charge.

(b) When a person is charged with leaving his post, it is always necessary to prove that he had been regularly posted.

(c) This offence can be committed by any member of the guard, picquet etc., even the guard etc., commander but a joint charge cannot be preferred.

16. *Without being regularly relieved or without leave*.—These words are in the nature of an exception, and the principle laid down in section 105 of IEA applies. Therefore, though the charge must aver the absence of regular relief or leave, this need not be proved, and the fact of the accused person having quitted his guard, etc., being established it will be for him to show that he was regularly relieved or had leave to quit his guard; nevertheless, any evidence bearing on this point which is known to the prosecutor should be adduced.

17. *Clause (i): 'Voluntarily'*.—The term as defined in s. 39 of the IPC relates to the causation of effects and not to the doing of acts from which those effects result. However, here it has been used more in its ordinary meaning e.g. of his own free will rather than in its technical sense i.e. it means merely that the accused was willing to do the act charged; it is not necessary to show that he volunteered to do it, or even that he wished to do it. In the absence of any evidence that compulsion was applied the court may find that the accused acted voluntarily; but if from the whole of the evidence given the court think that the accused's will may have been overborne by fear they should acquit him. The test is whether the particular accused was in fact so frightened as to have lost control of his will, not whether the methods used by his captors were such as would cause a reasonably brave man to lose control. Coercion will, therefore, be a defence to such a charge.

18. *Clause (j): 'Knowingly'*.—Evidence should, if possible, be given that the accused knew the person harboured or protected to be an enemy who is not a prisoner but if the fact of the harbouring or protecting is proved, the court may infer knowledge from the circumstances.

19. *'Harbouring'*.—The word 'harbour' includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance or the assisting of a person by any means, whether of the above kinds or not to evade apprehension: IPC section 52A.

20. *Enemy*.—See AA. s. 3 (x).

21. *Clause (k): 'Post'*.—(a) As used with respect to an individual in this and other clauses the term refers to the position or place in which it may be the duty of a person subject to this Act to be, especially when under arms. With respect, in particular, to a sentry, it applies (i) to the spot where the sentry is left to the observance of his duties by the officer, JCO or NCO posting him, or (ii) to any limits specially pointed out as his beat. The fact that a sentry has not been regularly posted is immaterial if he is charged with an offence committed while on his post provided evidence is given to prove that he adopted the duty of sentry.

(b) In determining what, in any particular case, is a post the court will use their military knowledge: AA. s. 134.

(c) A sentry found sleeping even a short distance from his 'post' should be charged with leaving his post under clause (h) or AA. s. 36 (d); he cannot be charged with sleeping on his post under this clause. However, where a sentry is found intoxicated, he could be charged under this clause though he is so found at a short distance away from his post as the place where he is found intoxicated is immaterial not being ingredient of the offence.

(d) A policeman on gate duty is not a sentry.

(e) Two or more accused cannot be tried jointly with committing an offence under this clause.

(f) The same offence when committed by a sentry in circumstances which do not fall under this clause is triable under clause (c) of AA. s. 36.

22. *Clause (l):* 'Knowingly'.—See notes 4 and 18 above.

A charge under this clause should particularise the actual acts alleged. The act or acts must be shown to have been deliberately done by the accused with the intention of imperilling the success of the said forces. Such intention may be proved in evidence or may be inferred from the circumstances

**35. Offences in relation to the enemy and not punishable with death.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner, fails to rejoin his service when able to do so; or
- (b) without due authority holds correspondence with or communicates intelligence to the enemy or having come by the knowledge, of any such correspondence or communication, wilfully omits to discover it immediately to his commanding or other superior officer; or
- (c) without due authority sends a flag of truce to the enemy;

shall, on conviction by court-martial be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

#### NOTES

1. Offences under this section should not be dealt with summarily under AA. ss. 80, 83, 84 or 85.

2. *Clause (a)* : Where the conduct of any person subject to the AA. when being taken prisoner by or while in the hands of the enemy is to be inquired into, the COAS may order a court of inquiry to be held for this purpose and on the basis of the finding of the said court, the pay and allowances of such person may be forfeited by order of the Central Govt.; see AA. ss. 90(h) and 96. Such a court of inquiry held in the absence of the said person is provisional and as such has no effect except on the pay and allowances of that person.

3. *Clause (b)* : This offence is less grave in form than the one under AA. s. 34(d).

4. (a) '*Communicates intelligence to*'.—A man must be taken to intend the natural consequences of his acts, and this clause appears to be wide enough to cover the case of intelligence reaching the enemy through the capture or the re-publication (e.g., by relatives or newspapers) of letters, sketches, photographs, etc. Everyone connected with the forces should recognise the grave danger of assisting the enemy by gossip, whether verbal or written, as to plans, prospects, operations, numbers, etc. as to unauthorised publication of official documents see Regs Army para 319 and Official Secrets Act, 1923 (reproduced in part III).

(b) In a charge under this clause however, it must be proved that the intelligence did in fact reach the enemy.

5. *Clause (c)*: The offence under this clause is less grave in form than the one under AA. s. 34(f).

**36. Offences punishable more severely on active service than at other times.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) forces a safeguard, or forces or uses criminal force to a sentry; or
- (b) breaks into any house or other place in search of plunder; or
- (c) being a sentry sleeps upon his post, or is intoxicated; or
- (d) without orders from his superior officer leaves his guard, picquet patrol or post; or
- (e) intentionally or through neglect occasions a false alarm in camp, garrison, or quarters or spreads reports calculated to create unnecessary alarm or despondency; or.
- (f) makes known the parole, watchword or countersign to any person not entitled to receive it; or knowingly gives a parole, watchword or countersign different from what he received;

shall, on conviction by court-martial,

if he commits any such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if he commits any such offence when not on active service, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

#### NOTES

1. Offences under this section when on active service should not be dealt with summarily under AA. ss. 80, 83, 84 or 85.

2. Clause (a): ‘Safeguard’.—A safeguard is a party of soldiers detached for the protection of some person or persons, or of a particular village, house, or other property. A single sentry posted from such party is still part of the safeguard, and it is as criminal to force him by breaking into the house or other property under his special care as to force the whole party. A man posted solely to control traffic is not a “safeguard” for the purposes of this provision.

3. ‘*Forces*’.—Does not necessarily mean use of physical force. Passing the sentry when warned by him not to do so will amount to this offence.

4. ‘*Uses criminal force*’.—For definition of criminal force see IPC. ss. 349 and 350.

5. ‘*Sentry*’.—(a) A sentry is posted for protecting some place, property or person and any forcible interference with such protection amounts to an offence under this clause provided the accused was aware that the sentry was in fact acting as such.

(b) An accused charged under this clause for using criminal force to a sentry can be found guilty of attempting to use such criminal force under AA. s. 139 (8) or of assaulting the sentry under AA. s. 139(3). Similarly, if the charge is laid under AA. s. 69 for using criminal force to a sentry, the accused can be convicted of attempting to use such criminal force to or assaulting him under AA. s. 139(6).

(c) See also note 21 to AA. s. 34, as to duties of sentries.

(d) A policeman on gate duty is not a sentry.

6. Clause (b): (a) The ‘other place’ should be specified in the charge.

(b) This clause, having regard to special military significance of the term plunder, is applicable only to offences committed on active service.



(c) For definition of 'house-breaking' see IPC. s. 445. A house indicates some structure intended for affording some sort of protection to the person dwelling inside it or for the property placed there for custody. What is a house must always be a question of degree and circumstances.

7. *Clause (c) : 'Sentry'.*—For definition see note 21 to AA. s. 34 and note 5 above. A sentry found asleep even a short distance from his post should be charged with leaving his post under clause (d), he cannot properly be charged with being asleep on his post, though he may be charged under AA. s. 63 with being asleep when on sentry duty. However the words 'upon his post' do not qualify the words 'is intoxicated'. It is therefore enough to constitute the offence if a person subject to the AA acting as a sentry is found intoxicated on his post or elsewhere during his tenure of duty as a sentry.

8. *Clause (d) : Superior officer.*—For definition see AA. s. 3(xxiii).

9. *'Post'.*—(a) See notes 15 and 21 to AA. s. 34. When a person is charged with leaving his post it is always necessary to prove that he had been regularly posted or had undertaken the duty on that post although he has not been regularly posted. Where a member of a guard or picquet furnishing a sentry for a post receives orders that he will relieve the sentry on the post at a fixed hour, and in due course does so, he will have been regularly posted although the officer, JCO or NCO in charge was not present himself at that time.

(b) This offence can be committed by any member of the guard picquet or patrol, even the guard, etc., commander but a joint charge cannot be preferred.

10. *Clause (e) :* See notes to AA. s. 34(g).

11. *'Through neglect :* See note 3(b) to AA. s. 63.

12. *Clause (f):* (a) The particulars of the charge must aver that the accused made known the watchward etc., to a person and that person was not entitled to receive the watchward etc.

(b) *'knowingly'.*—see note 18 to AA. s. 34 above.

**37. Mutiny.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) begins, incites, causes, or conspires with any other persons to cause any mutiny in the military, naval or air forces of India or any forces co-operating therewith; or
- (b) joins in any such mutiny; or
- (c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or
- (d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer; or
- (e) endeavours to seduce any person in the military, naval or air forces of India from his duty or allegiance to the Union;

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

#### NOTES

1. Offences under this section should not be dealt with summarily under AA. s. 80, 83, 84 or 85.

2. (a) The limitation of time for the commencement of trial (three years) prescribed by AA. s. 122 does not apply to the offence of mutiny.

(b) As the maximum punishment for offences under this section is death :—

(i) a summary of evidence must be taken.

(ii) a plea of guilty cannot be accepted [AR 52(4)].

(iii) the trial should not take place before a summary or district court-martial.

3. (a) Mutiny implies collective insubordination, or a combination of two or more persons to resist, or to induce others to resist, lawful military authority.

(b) Words in the plural include the singular (s. 13 General Clauses Act, 1897). Therefore a person can be charged under clause (a) with conspiracy with one other person to cause a mutiny.

(c) A person cannot be charged generally with mutiny, or with an act of mutiny, but only with some one or more of the specified offences laid down in this section. If he has not brought himself within the terms of the section, his offence, however much it may tend towards mutiny, must be dealt with as insubordination and the provisions of AA. s. 40 or 41 will usually afford ample powers for the purpose. Thus, where there is an actual mutiny or a conspiracy to mutiny, all concerned in the mutiny or conspiracy can be tried under this section for causing or conspiring to cause, or joining in, the mutiny, as the case may be. If no mutiny or conspiracy exists, a person can only be tried under this section if the charge is one of being present at a mutiny not using his utmost endeavour to suppress the same or of failing to inform his commanding or other superior officer of an intent to cause mutiny or such conspiracy or of endeavouring to seduce any person in the forces from his duty or allegiance to the Union.

(d) In framing a charge under this section the specific act or acts which are alleged to have constituted the offence must always be averred; and the offence is so grave that a charge for it should only be brought on very clear evidence. Cases of insubordination, even on the part of two or more persons, should unless there appears to be a combined design on their part to resist authority, be charged jointly under AA. s. 40(a) with using criminal force, assaulting, or separately under AA. s. 40(b) or (c) with using threatening or insubordinate language, or under AA. s. 41, or, if these sections are inapplicable jointly or separately under AA. s. 63. Provocation by a superior or the existence of grievances, is no justification for mutiny or insubordination though such circumstances would be given due weight in considering the question of punishment.

(e) Collective petitions/representations or the submission of a petition through the medium of any association in respect of military matters are forbidden on this ground.

4. If there is evidence that a person caused, or conspired with others to cause a mutiny, but a doubt exists as to whether he took such an active part as to have actually joined, in the mutiny, he may be charged under clause (b) with an alternative charge under clause (a). On the other hand, doubts may arise whether the persons who appear to be taking an active part are actually acting in combination, and in such cases it is desirable to prefer separate charges in the alternative under AA. s. 40 or AA. s. 41 as appropriate.

5. Persons present on parade or present accidentally or induced by false pretences to attend a meeting where a mutiny is being contrived may still be guilty of an offence under clause (c) although they took no active part in the proceedings.

6. (a) Not using his utmost endeavour in clause (c) does not necessarily mean the utmost of which a person is capable, but such endeavours as person might reasonably and fairly be expected to make, and every person in a squad not marching or not coming from their barrack room when duly ordered, is guilty of mutiny.

(b) In clause (d), it will be noticed that the person who comes to know of an existing or intended mutiny will have performed his duty under this clause if he gives information without delay either to his CO or any other superior officer. Such information would naturally be given to the immediate superior of the person, who would, in his turn, be bound to transmit it to higher authority.

(c) Commanding officer: *see* AA. s. 3(v).

Superior officer: *see* AA. s. 3(xxiii)

7. Endeavours to seduce etc. the attempt itself is punishable. It is immaterial whether the attempt succeeds or not.

**38. Desertion and aiding desertion.**—(1) Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by court-martial,

if he commits the offence on active service or when under orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned; and

if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who, knowingly harbours any such deserter shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(3) Any person subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other, superior officer, or take any steps in his power to cause such person to be apprehended, shall, on conviction, by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

#### NOTES

1. *General.*—(a) An offence under sub-section (1) of this section when on active service or under orders for active service should not be, dealt with summarily under AA. ss. 80, 83, 84 or 85.

(b) When a superior officer directs the case of an offender against whom a charge for desertion has been preferred to be summarily disposed of, he should order the offence to be disposed of as one of absence without leave. See notes to AA. s. 39. See generally AA ss. 104 and 105 and Regs Army paras 376 to 381.

(c) Under AA. s. 120(3), a CO can try by SCM a NCO or sepoy under his command, for an offence under this section. As a rule a NCO or OR cannot be attached to another unit for purposes of his trial by SCM; but see Regs for the Army para 381 for the circumstances when a CO other than the CO of the unit to which a NCO OR properly belongs, can try him by SCM for an offence of desertion or absence without leave.

2. *Sub sec.*— (1) Desertion is distinguished from absence without leave under AA. s. 39; in that desertion or attempt to desert the service implies an intention on the part of the accused either (a) never to return to the service or (b) to avoid some important military duty (commonly known as constructive desertion) e.g., service in a forward area, embarkation for foreign service or service in aid of the civil power and not merely some routine duty or duty only applicable to the accused like a fire picquet duty. A charge under this section cannot lie unless it appears from the evidence that one or other such intention existed; further, it is sufficient if the intention in (a) above was formed at the time during the period of absence and not necessarily at the time when the accused first absented himself from unit/ duty station.

3. A person may be a deserter although he re-enrols himself, or although in the first instance his absence was legal (e.g. authorised by leave), the criterion being the same, viz., whether the intention required for desertion can properly be inferred from the evidence available (the surrounding facts and the circumstances of the case).

4. Intention to desert may be inferred from a long absence, wearing of disguise, distance from the duty station and the manner of termination of absence e.g., apprehension but such facts though relevant are only *prima facie*, and not conclusive, evidence of such intention. Similarly the fact that an accused has been declared an absentee under AA. s. 106 is not by itself a deciding factor if other evidence suggests the contrary.

5. A person subject to the AA charged with desertion may be found guilty of an attempt to desert or of absence without leave, and such a person charged with attempting to desert may be found guilty of being absent without leave provided evidence was available to prove the absence; see AA. s. 139(1) and (2). When the absence began more than 3 years before the date of trial, the provisions of AA. s. 122 must be borne in mind and complied with. For instance where an accused person is charged with desertion commencing on a date more than three years before the date of trial, he cannot be found guilty under AA. s. 139(1) of absence without leave from that date but such absence must be restricted to a period not exceeding three years immediately prior to the commencement of trial; where such a finding and sentence has been wrongly confirmed, the competent authority under AA. s. 163 may substitute a valid finding and pass a sentence for the offence specified or involved in such finding.

6. When a person subject to AA has been absent from his duty without authority for a period of thirty days, a court of inquiry is mandatory under AA. s. 106 but even after such a court of inquiry has been held, the case can still be disposed of summarily under AA. s. 80, 83, 84 or 85 but the charge should be laid for absence without leave under AA. s. 39. As to inquiring into absence see AR 183 also.

7. AA. s. 122 which prescribes the limitation of time for the trial of offences expressly excludes desertion; but where a person other than an officer has subsequently to the commission of the offence served continuously in an exemplary manner for not less than three years, he cannot be tried for such offence of desertion which was committed before the commencement of such three years other than desertion on active service. For 'exemplary service' see Regs Army para 466.

8. Two or more persons cannot be tried jointly with committing the offence of desertion under this sub-sec.

9. AA. ss. 90(a) and 91(a) read with P and A Regs provide for automatic forfeiture of pay and allowances for every day a person subject to AA is absent on desertion or without leave.

10. As to forfeiture of service for pension or gratuity, which follows upon desertion, and restoration of service so forfeited, see Regs pension (Part I) Reg 123. The period between desertion and apprehension/surrender does not, under the prescribed conditions of enrolment; reckon as service towards discharge. Service rendered previous to desertion, though forfeited for purposes of pension or gratuity, reckons as service towards discharge.

As to a person who absents himself from his corps or department and enrolls again, see AA. s. 43 and notes thereto.

11. (a) While framing charges of desertion or absence without leave care must be taken to ensure that the particulars allege and the prosecution prove, both the date when the absence began, and the date when it ended (by return, surrender, apprehension or re-enrolment). It is not sufficient to allege and prove absence "on or about" a certain date, or "from some date subsequent to....."

(b) Commencement of absence under this section or AA. s. 39 may be proved in the following ways:

- (i) orally by a witness who found the accused absent, or
- (ii) by production by a witness on Oath, who can identify the accused as the person named in :
  - (aa) the declaration of a court of inquiry held under AA s.106 as entered in the court-martial book; or
  - (bb) a certified true copy of the above declaration on IAFD-918; or
  - (cc) an entry in a Part II Order; provided the entry is one that is made in Regimental orders/books in pursuance of military duty and the orders purported to be signed by the CO or by the officer whose duty it is to make such record AA. s. 142(3). Such an entry should only be used as evidence where no direct evidence and no declaration of a court of inquiry is available and even then it is only prima facie evidence and may be rebutted; or
  - (dd) a copy of such an order purporting to be certified to be a true copy by the officer having custody of such order; see AA. s. 142(4);

Provided AA.s. 106 and AR 183 have been complied with.

(c) Termination of absence may be proved in the following ways:—

- (i) by oral evidence of a witness who apprehended the accused or to whom the accused surrendered;  
or
- (ii) by production by a witness on oath, who can identify the accused as the person named in :
  - (aa) a certificate on IAFD-910 stating the fact, date and place of surrender or apprehension and the manner in which the accused was dressed and signed by a police officer not below the rank of an officer in charge of a police station to whom the accused surrendered or by whom he was apprehended AA. s. 142(6); or
  - (bb) where the surrender was made to an officer or other person subject to AA or any portion of the regular Army or where the accused was apprehended by an officer or other person subject to AA, a similar certificate signed by the 'proper' officer: AA. s. 142(5) (Also see Regs Army para 378); or
  - (cc) a Part II Order showing the taking on strength properly signed in accordance with AA. s. 142(3); or
  - (dd) a certified true copy of such order in accordance with AA. s. 142(4); or
  - (ee) where the absence terminated by fraudulent enrolment in the regular Army, the enrolment paper or certified true copy thereof. AA. s. 141(2).

12. The commencement of an absence cannot be proved by production of an absence report as this is not a regimental book under Regs Army para 610.

**13. Attempt to desert.**—To establish an attempt to desert, some act which, if completed, would constitute desertion must be proved, e.g., a soldier is arrested in the act of leaving his unit lines without authority, dressed in plain clothes and carrying his personal kit, when the circumstances indicate that he intends to desert. The test is whether the act, or series of acts, in the course of which the offender is apprehended or surrenders, would, if completed, amount to desertion. A mere preparation to desert, if unaccompanied by any such act which if completed would amount to desertion, does not constitute an offence of attempting to desert. But if there is evidence that the offender actually absented himself from the place where his duty required him to be and that he intended to desert, the offence is complete and charge for desertion, not for an attempt to desert should be framed.

Attempt to desert is itself made a substantive offence, and a charge for the same should be preferred under this sub sec and not under AA. s. 65.

14. For definition of active service; see AA. s. 3(i).

15. Abetment of desertion of a person subject to the AA can be charged under AA. s. 66.

16. *Sub sec (2): Knowingly.*— see note 18 to AA. s. 34.

17. Harbours: see Note 19 to AA. S 34.

18. *Any such deserter.*—A charge under this sub sec can lie when the offence of desertion has already been committed.

19. *Sub sec. (3).*—To substantiate a charge the particulars must specify the precise steps which, it is alleged by the prosecution, were within the power of the accused to take to cause the deserter or intending deserter to be apprehended. The times at which the accused became aware of the desertion or attempt to desert and gave notice to a superior officer, are material and should be disclosed in the charge.

20. Superior officer means the 'Superior Officer' in relation to the offender, not to the deserter or intending deserter.

**39. Absence without leave.**— Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) absents himself without leave; or
- (b) without sufficient cause overstays leave granted to him; or
- (c) being on leave of absence and having received information from proper authority that any corps, or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay; or
- (d) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or

- (e) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer, quits the parade or line of march; or
- (f) when in camp or garrison or elsewhere, is found beyond any limits fixed, or in any place, prohibited by any general, local or other order, without a pass or written leave from his superior officer; or
- (g) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

#### NOTES

1. Two or more accused should not be jointly charged with an offence under this section.
2. *Clause (a):* The criterion between desertion and absence without leave is intention. Where all the ingredients of the offence of desertion are present except an intention not to return to the service or to avoid some important military duty, the offence will be one of absence without leave or any other offence of this genus *e.g.*, failure to appear at the time fixed at the parade.
  3. (a) Absence without leave must not be involuntary absence *e.g.*, due to illness or being taken into civil or military custody, whether on surrender or apprehension. However, the mere reporting by an absentee to a provost officer or M.C.O. or the fact that such provost officer or M.C.O. orders the absentee to return to his unit will not terminate the voluntary absence; which will continue to run until the absentee rejoins his unit.
  - (b) To render an absence involuntary there must be some physical impracticability, outside the control of the offender, that prevents his return, to his unit. Inability to return to his unit through intoxication which is an offence under AA. s. 48 will not make such absence involuntary nor would an inability which arises through lack of money or loss of his railway or other ticket. Further, where the absence without leave was originally voluntary and has by change of circumstances, subsequently become involuntary the offender may be convicted of absence for the whole period. Similarly, an absence that was originally involuntary becomes voluntary, if the offender fails to return to his unit at the earliest practicable moment *e.g.*, failure to return on release from a civil prison.
  - (c) Where the prosecution proves that the accused was absent and that he had not been granted leave, the court may, in the absence of any satisfactory explanation by the accused, infer that the absence was voluntary.
4. (a) A court considering a charge under this section should consider "was the accused at the place where his duty required him to be?"
  - (b) An offence under this section is one of absence without leave, and not merely absence. Leave of absence must be notified to the applicant for such leave. A person who has applied for leave, and departs from his unit before it is actually granted, commits the offence of being absent without leave, even though the leave had been granted but not notified to him.
  - (c) When evidence has been given of the accused's absence, or failure to appear at the place required, and that evidence is sufficient to raise an inference that he had no leave of absence, then the court may look to the accused to provide evidence, by way of defence, for his "leave", "sufficient cause" or "due cause" as the case may be.
5. (a) For proof of commencement and termination of absence *see* note 11 to AA. s. 38.
  - (b) The particulars of a charge of absence without leave should state the date when the absence began and terminated. Where the exact hour of the absence is material for the purpose of proving a whole day's absence, as it may be under the provisions of AA. s. 92, the hour of the offender's departure and return should also be stated in the particulars of the charge.
  - (c) Where, for some reason, it is not possible to prove the exact dates of commencement and termination of the absence, but it is possible to show that an absentee was at some place other than his place of duty, a charge under AA. s. 63 alleging that he was improperly at one place; whereas his duty required him to be elsewhere may be preferred.
6. Under AA. s. 90(a), read with P & A Regs (Officers), an officer automatically forfeits all pay and allowances due to him for every day he absents himself without leave or overstays the period of his leave unless a satisfactory explanation has been given to his CO and has been approved by the Central Govt.



AA. s. 91(a) read with P & A Regs (OR), makes such deductions also automatic in the case of persons subject to AA other than officers; the CO of such absentee can, however, remit such penal deduction if the absence does not exceed five days; AR 195(b). The penal deductions under AA ss. 90(a) and 91(a) may be made without the absentee being convicted by court-martial or dealt with summarily under AA. ss. 80, 83, 84 or 85.

7. Under AA. s. 139(1) and (2), a person subject to AA and charged with desertion or attempted desertion may be found guilty of absence without leave but not *vice versa*. Also *see* note 5 to AA. s. 38.

8. When a person has been absent without leave for 30 clear days or has overstayed his leave without sufficient cause for that period, a court of inquiry will be assembled under AA. s. 106. Also *see* AR 183.

9. Under AA. s. 120(3), a CO can try by SCM a NCO or a sepoy under his command for an offence under this clause. For the circumstances when a CO other than a CO of the unit to which a NCO or OR properly belongs, can try an offence under this clause *see* note 1(c) to AA. s. 38.

10. If at any trial for desertion or absence without leave, overstaying leave or not rejoining when warned for service, the accused states in his defence any sufficient or reasonable cause for his absence and refers in support to any officer in the service of the Government, it is the duty of the court to address such officer if it appears that such officer may prove or disprove the accused's statement; AA. s. 143. Failure to comply with this provision may result in annulment of the proceedings.

11. *Clause (b).*—This offence is basically the same as in clause (a); except that the absence becomes illegal only after the expiry of his authorised leave; whereas under clause (a) the absence is illegal *ab-initio*.

12. If it is proved that a person subject to the AA. has overstayed his leave, it will be for him to show that he had sufficient cause (*e.g.*, sickness or the unexpected interruption of the ordinary means of transit) for doing so. If, however, any evidence as to the cause of his failure to return is known to the prosecutor, it should be adduced, leaving it to the court to decide as to the sufficiency of such cause.

13. *Clause (c).*—Charges under clauses (c), (d), (e) or (g) should not ordinarily be preferred as any offence under those clauses must almost invariably amount to an offence under clause (a) and a charge under the latter clause is simple to prove.

14. Without sufficient cause : *see* note 13 above.

15. *Corps.*— *see* AR 187(3).

*Department.*— *see* AA. s. 3(ix).

*Active service.*— *see* AA. s. 3(i).

16. *Clause (d).*—(a) Before a conviction can be obtained under this clause, it must be proved that the time was fixed and the place appointed by competent authority, and that the accused was aware of this fact. These facts are sometimes difficult to prove and therefore a charge of absence without leave under clause (a) is usually more practicable. *See* also note 13 above.

(b) A person who is late for parade commits an offence under this clause, equally with one who is altogether absent.

(c) Absence from a parade etc., through intoxication should not be charged under this section but under AA. s. 48 for intoxication. Ignorance of the order for the parade, although exposing the offender to a charge under AA. s. 63, for failing to acquaint himself with the order as required by Regs Army para 324, will not render him liable to a conviction under this clause. Where a reasonable misapprehension of the order exists, based on lack of clarity in the terms of the order itself, this may, in certain circumstances amount to a good defence to the charge.

17. *Clause (f).*—'Camp' includes a bivouac and any quarters, shelter, or other place where troops are temporarily lodged.

18. '*General, local or other order*'.—The orders specified in this clause are standing orders or orders in writing and applicable continuously over a period of time to persons present in a certain geographical area or in a certain military formation. Ignorance of the order is no excuse if the order is one which the accused ought, in the ordinary course, to know. But a misapprehension reasonably arising from want of clarity in the order is a ground for exculpation. The existence of the order must be proved by producing it or a certified copy where so permissible under AA. s. 142(4) on oath/affirmation to the court. A written order cannot be proved by oral testimony. Evidence must also be led to show that the order was duly posted or brought to the notice of the accused, or that he was otherwise in a position to be acquainted with its contents.

19. (a) A charge alleging “without a pass or written leave from his superior officer” would be a good charge under this clause, since it is a single offence for him to have neither a pass nor written leave. On the other hand, a charge alleging “beyond the limits fixed by general or local orders” would be bad since it might be one offence to be beyond the limits fixed by general orders, and another offence to be beyond the limits fixed by local orders (see AR 30).

(b) *Without a pass or written leave from his superior officer.*—These words are in the nature of an exception, and on being proved that the accused was found beyond fixed limits, it will rest on him to show that he had the proper authority

20. Superior officer. See AA. s. 3 (xxiii).

**40. Striking or threatening superior officers.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) uses criminal force to or assaults his superior officer; or
- (b) uses threatening language to such officer; or
- (c) uses insubordinate language to such officer;

shall on conviction by court-martial,

if such officer is at the time in the execution of his office or, if the offence is committed on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned;

Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years.

#### NOTES

1. *Clause (a).*—Offences under this clause should not be dealt with summarily under AA. s. 80, 83, 84 or 85.

2. (a) For definition of ‘force’, using criminal force and ‘assault’, see IPC. ss. 349, 350 and 351 (Part III). The difference between the offence mentioned in this clause will be clear from the following examples:—

- (i) A throws a stone at B. If the stone hits B, A has used criminal force, if it misses him, A has attempted to use criminal force.
- (ii) A, during an altercation with B, picks up a stone in a threatening manner. If A intends, or knows it to be likely, that this will cause B to believe that A is about to throw the stone at him. A commits an assault on B.

An ‘assault’, is something less than the use of criminal force; the force being cut short before the blow actually falls. It seems to consist in an attempt or offer by a person having present ability, with force to do any hurt or violence to the person of another, and it is committed whenever a well founded apprehension of peril from a force partially or fully put in motion is created, *e.g.*, when a person draws a bayonet or otherwise makes a show of violence against a superior but not when he is behind the bars or at such a distance as to rule out at the moment any actual use of criminal force. An assault is thus included in every use of criminal force, and is an intermediate stage thereof.

(b) If the force be used in the exercise of the right of private defence, for instance, if it be shown that it was necessary, or that at the moment the accused had reason to believe it was necessary for his actual protection from injury, and that he used no more force than was reasonably necessary for this purpose, he is legally justified in using it, and commits no offence. See IPC. ss. 96, 97—102 (Part III).

(c) Provocation is not a ground of acquittal, but tends to mitigate the punishment; evidence of provocation, if tendered, must therefore be admitted. Also see note 6 to AR 52.

(d) As to intoxication as an excuse or defence to a charge under this section, see note 4 to AA. s. 48.

3. A joint charge under this clause can be sustained provided that the use of criminal force or assault was the result of a concerted action in furtherance of a common intent (IPC. s. 34) though in some cases such concerted use of force may amount to an offence under AA. s. 37(b) also.

4. When use of criminal force to a superior is accompanied by insubordinate language, the use of criminal force only should be charged (assuming that the evidence is satisfactory) and the language would be admissible in evidence to show the manner in which the offence was committed.

5. A person charged with using criminal force may be found guilty of an attempt to use criminal force, or assault [AA. s. 139(8) and (3)].

6. (a) Superior Officer.—See AA. 3(xxiii).

(b) While framing a charge under this section, the name of the superior officer must be set out in the particulars of the charge.

(c) The expression ‘superior officer’ in this section and in AA. s. 41 means not only a superior in rank but also a senior in the same grade where that seniority gives power of command according to the usages of the service, but one sepoy can never be the “superior officer” of another. The court should be satisfied, before conviction, that the accused knew the person, with respect to whom the offence was committed, to be a superior officer. If the superior did not wear the insignia of his rank, and was not personally known to the accused, evidence would, be necessary to show that the accused was otherwise aware of his being his superior officer, or had reason to believe him, to be his superior officer. If such evidence is not available, the accused should be charged under AA. s. 63 or 69.

(d) Where the accused is charged with an offence against a superior officer who is of the same grade, evidence must be adduced to show that the latter is senior to the accused.

(e) The lower the rank of the superior the less is the gravity of the offence. Also see Regs Army para 450.

7. (a) The offence under this clause or clauses (b) and (c) is punishable more severely if such superior officer was at the relevant time in the execution of his office or if the offence is committed on active service. Such aggravating circumstances should not be averred in the particulars unless the case warrants severe punishment and it is intended to try the accused by a GCM.

(b) It is difficult accurately to define the words ‘in the execution of his office’, but the military knowledge and experience of the members of a court-martial will enable them in most instances readily to determine whether the superior officer was or was not in the execution of his office. A superior officer in plain clothes may undoubtedly be in the execution of his office; but where the superior officer is in plain clothes, it becomes necessary to prove some knowledge on the part of the accused at the time of the offence that the person who was assaulted or to whom criminal force was used was a superior officer and that he was known to the accused as such, which is not the case where the superior officer is in uniform. On the other hand, there may be circumstances in which a superior officer in uniform is not in the execution of his office. It may be taken in general that using criminal force to or assaulting any superior officer by a person subject to AA over whom it is, at the relevant time, the duty of that superior officer to maintain discipline, would be using criminal force to or assaulting him in the execution of his office.

(c) When the accused is charged, with using criminal force to or assaulting his superior officer who is at the time in the execution of his office or if the accused is charged with committing the offence on active service and the court is satisfied that the offence was committed but not on active service or that the superior officer was not then in the execution of his office, he may be found guilty under AA. s. 139(7) of the same offence as having been committed in circumstances involving a less severe punishment.

8. *Clause (b).*— A joint charge of using threatening or insubordinate language to a superior officer should not be preferred.

9. Where the charge is for using threatening or insubordinate language the particulars of the charge must state the expressions or their substance, and the superior to whom they were addressed. See note 7 above.

10. Expressions, however offensive to a superior, that are used (a) in the course of a judicial inquiry, (b) by a party to that inquiry, and (c) upon a matter pertinent to and bonafide for the purposes of that inquiry, as, for instance, the credibility of a witness, are privileged, and cannot be made the subject of a criminal charge.

11. Expressions used of a superior officer and not within his hearing or which cannot be proved to be used to a superior officer, must be charged as an offence under AA. s. 63. and not under this section, but the use of threatening or otherwise insubordinate language regarding one superior to (in the sense that it is intended to be heard by) another superior constitutes an offence of using threatening or insubordinate language under this section.

12. Threatening language means language from which a person addressed may reasonably infer that criminal force may be used. This may be inferred either from the character of the words used or from the surrounding circumstances.

13. Whereas all threatening language is insubordinate the converse is not true; therefore unless there is no doubt as to his intention an accused should be charged with using insubordinate language rather than threatening. A court may, however, if satisfied in other respects that an offence under this section has been committed, make a special finding when an accused is charged with the offence of using threatening language that he was guilty of using insubordinate language. [AA. s. 139(4)].

14. *Clause (c).*—See notes 7 to 11 and 13 above.

15. The words must be used with an insubordinate intent, that is to say, they must be, either in themselves, or in the manner or circumstances in which they are spoken, insulting or disrespectful, and—in all cases it must reasonably appear that they were intended to be heard by a superior. The words themselves need not necessarily be discourteous. If they indicate a deliberate intention to be insubordinate or resist lawful authority they may properly be regarded as disrespectful of authority, although courteously expressed. Where for instance a sepoy, having been given a lawful command which does not require immediate compliance, indicates respectfully that he does not intend to comply with it and is at once placed in arrest before being given a chance to comply, he may be charged with an offence under this section though not with an offence under AA. s. 41(2).

16. Further a sepoy may in an outburst of temper or excitement use violent language without intending to be insubordinate. Allowance should also be made for the use of coarse expressions by a person of inferior education which might often be used as mere expletives. These expressions might be insubordinate if used, by an officer, a JCO or a senior NCO but not so when used by a junior NCO or a sepoy. These points must be considered by a court before convicting an accused of an offence under this clause.

17. As to the use of coarse and abusive language by a person who is intoxicated, see note 6 to AA. s. 48.

18. The words need not necessarily be spoken. If an accused writes a letter containing insubordinate expressions and addresses it to a superior officer, intending the letter to be read by the addressee, a charge would lie under this clause.

19. The use of what is commonly known as “bad” language need not necessarily give rise to a charge either under this section or AA. s. 63.

**41. Disobedience to superior officer.**—(1) Any person subject to this Act who disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office whether the same is given orally or in writing or by signal or otherwise shall, on conviction by court-martial be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who disobeys any lawful command given by his superior officer shall, on conviction by court-martial,

if he commits such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned ; and

if he commits such offence when not on active service, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

#### NOTES

1. Offences under this section, when on active service, should not be dealt with summarily under AA. ss. 80, 83, 84 or 85.

2. An offence under this section cannot be made the subject of a joint charge.

3. *Lawful Command.*—The command must be a specific command to an individual i.e., it must be capable of individual execution by the person to whom it is addressed, and justified by military, as well as by civil, law and usage, e.g., a command addressed by a superior officer to four persons to “dismiss” is for the purposes of this section a lawful military command to each of the four persons so addressed. The command must relate to military duty that is to say disobedience to it must tend to impede, delay, or prevent a military proceeding. The disobedience must have reference to the time at which the command is to be obeyed. If the command be a lawful command, and demands a prompt and immediate compliance, hesitation or unnecessary delay in obeying it may be sufficient to constitute an offence under this section. A person who on being ordered to do a certain thing at some time, uses words expressing an intention not to obey,

and is immediately confined, does not commit an offence under this section. He should be charged under AA. s. 40(c) or 63 according to the circumstances of the case. A neglect to carry out an order due to misapprehension, or forgetfulness, does not constitute an offence under this section though non-compliance with an order through forgetfulness or negligence would be chargeable under AA. s. 63.

4. *Sub-sec (1).*—(a) The essential ingredients of this offence are that the disobedience should show a willful defiance of authority and should be disobedience of a lawful command given personally in the execution of his office by a superior officer; in fact, it would ordinarily be such an offence as would fall under AA. s. 37 if two or more persons joined in it. In order, therefore, to convict an accused of an offence under this sub-sec., it must be shown (i) that a lawful command was given by a superior officer; (ii) that it was given personally by such officer; (iii) that it was given by such officer in the execution of his office; (iv) that the accused disobeyed it, not from any misunderstanding or slowness, but so as to show a willful defiance of his superior officer's authority.

(b) The disobedience must be willful and deliberate, and distinguished from disobedience arising from forgetfulness or misapprehension (which might, however, be punished under AA. s. 63). It is not disobedience in the sense of this section if a sepoy declines to sign his accounts on the grounds that they are incorrect; nor his failure to obey a command where obedience would be physically impossible.

(c) Religious scruples, however, bona fide, afford no justification for disobedience of commands which are clearly lawful.

(d) Disobedience to an order of a general nature, as for instance to a regimental order or a para of regulations, is not chargeable under this section but under AA.s. 42(e) or 63.

5. (a) Superior officer; see AA. s. 3(xxiii).—A 'superior officer' whose command has been restricted, either by the terms of his commission or by regulations, cannot give a lawful command to a person who is, by the terms of such restrictions, placed outside his control.

(b) Disobedience of a lawful order given by a person who is not a superior officer within the meaning of AA.s. 3 (xxiii) may be punishable under AA. s. 63 if the disobedience was prejudicial to good order and military discipline; for instance, a civilian cannot give a "lawful command" under this section to a soldier employed under him; but it may well be the soldier's duty as such to do the act indicated, and, if so, he may be punished for not doing it under AA.s. 63. The particulars of the charge should clearly show that the disobedience was prejudicial to good order and military discipline because the soldier had been placed under the orders of the civilian by a superior military authority.

(c) The particulars of the charge must set out the name of the superior officer and a charge for disobeying an order given by two different superior officers would be bad for duplicity. AR 30 (1).

6. In the execution of his office; see note 7 to AA. s. 40.

7. A court trying an accused for an offence under this sub-sec could, if it was not satisfied that the order was given in the execution of the superior's office, find the accused guilty of an offence under sub sec (2) provided that in all other respects an offence under this section had been committed [AA.s. 139(7)].

8. *Sub-sec. (2).*—The offence under this sub-sec is a less grave offence when not committed on active service and consists of disobedience of any lawful command given by a superior officer but not accompanied by the essential elements of the graver offence under sub-sec (1).

9. The particulars of the charge must specify the command, the name of the superior officer giving it, the fact of disobedience and if the charge is laid under sub sec (1) also that it was given personally by superior officer in the execution of his office specifying the nature of the offence and the manner in which the disobedience showed a willful defiance of authority.

**42. Insubordination and obstruction.**—Any person subject to this Act who commits any of the following offences, that is to say,

- (a) being concerned in any quarrel, affray, or disorder, refuses to obey any officer, though of inferior rank, who orders him into arrest, or uses criminal force to or assaults any such officer; or
- (b) uses criminal force to or assaults any person, whether subject to this Act or not, in whose custody he is lawfully placed, and whether he is or is not his superior officer; or

- (c) resists an escort whose duty it is to apprehend him or to have him in charge; or
- (d) breaks out of barracks, camp or quarters; or
- (e) neglects to obey any general, local or other order; or
- (f) impedes the provost-marshal or any person lawfully acting on his behalf or when called upon, refuses to assist in the execution of his duty a provost-marshal or any person lawfully acting on his behalf; or
- (g) uses criminal force to or assaults, any person bringing provisions or supplies to the forces:

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend, in the case of the offences specified in clauses (d) and (e) to two years, and in the case of the offences specified in the other clauses to ten years, or such less punishment as is in this Act mentioned.

#### NOTES

1. *Clause (a).*—For definitions of affray, criminal force and assault, see IPC.ss. 159 and 349-351 (reproduced in Part III).

An affray differs from assault in that the former cannot be committed in a private place whereas the latter may take place anywhere; further an affray is an offence against the public peace while an assault is an offence against the person of an individual.

2. A person may be charged under this clause whether the officer who ordered him into arrest was of inferior or superior rank, but where the officer was of superior rank, the offender may be charged under AA.s. 40 or 41. Only officers should be charged under this clause.

3. An accused charged under this clause with using criminal force could be found guilty under AA.s. 139 of an attempt to use criminal force or assault.

4. As to intoxication as a defence to a charge see note 4 to AA.s. 48.

5. *Clause (b).*— A charge may be laid under this clause for assaulting a civil policeman, if the person committing the assault is subject to military law, and has been lawfully placed in the policeman's custody.

6. *Clause (c).*— Resistance may be direct violence but threatening words and a threatening attitude might amount to resisting an escort, if the threats were sufficient to deter the escort from arresting the accused. Resistance may also be passive, e.g. a person lying down and refusing to move, if physically able to move, could be said to resist. The particulars of the charge should specify the nature of the resistance. The court will use their military knowledge to determine whether it was the duty of the escort to apprehend the accused or to have him in charge.

7. *Clause (d).*— (a) This offence consists of a person quitting barracks, etc., at a time when he had no right to do so, either because he was on duty or under punishment, or because of some regulation or order; and it is immaterial whether the offence was managed by violence, stratagem, disguise, or simply by walking past a sentry unnoticed. The mode in which the act was effected will, however, assist a CO in determining whether a charge be preferred under this clause, or under AA.s. 38(1). The particulars of the charge must show that the absence from barracks etc., was without permission, or otherwise unlawful, and also if the accused was in any way confined to barracks that fact must be alleged in the charge.

(b) In a charge for breaking out of barracks, it must be proved that the accused left the confines of the barracks, as charged. A charge of breaking out of quarters would hold good in the case of a person quartered in one part of a barrack and improperly leaving that part for another part where he had no right to be.

8. *Clause (e).*— (a) The orders specified in this clause mean standing orders or orders having a continuous operation or applicable continuously over a period of time to all officers, JCOs, WOs and OR present in a certain geographical area, such as Command, Area, Sub Area or Station or in a certain military formation such as Army, Corps Division or Brigade. Disobedience of a specific order in the nature of a command should be dealt with under AA.s. 41 and non-compliance, through forgetfulness or negligence, with an order to do some specific act at a future time under AA.s. 63.

(b) Ignorance of the order is no excuse, if the order is one which the accused ought in the ordinary course to know. But a misapprehension reasonably arising from want of clarity in the order is a ground for



exculpation. The existence of the orders and the fact of the neglect must be proved. The order contravened, or a certified copy where such copy is admissible under AA.s. 142(4) must be produced on oath to the court and the court will make a record in the proceedings of its having been so produced. A written order cannot be proved by oral testimony. Evidence must also be given to show that the order was duly posted or brought to the notice of the accused, or that he was otherwise in a position to be acquainted with its contents. Disobedience of a regulation may be punished under AA.s. 63 but if the regulation is published as a regimental order, it acquires the character of a general, local or other order, and disobedience to it may be punished under this clause.

(c) Concealment of venereal disease is to be dealt with under this clause if standing orders to the effect have been published that a person subject to AA who is suffering from VD must report sick without delay. Also see Regs for the Army para 354.

9. *Clause (f).*— As to the definition, appointment and duties of provost-marshals see AA.ss. 3(xx) and 107.

Under AA. s. 107(4) a provost-marshal includes a provost-marshal appointed under any law for the time being in force relating to the governance of the Navy or Air Force and any person legally exercising authority under him or on his behalf.

10. The court may exercise their military knowledge as to whether a person was a provost-marshal, or a person legally exercising authority under or on behalf of the provost-marshal; but it will be open to the accused to show that the person he is charged with impeding was not properly appointed provost-marshal or was not lawfully acting on his behalf.

11. It is frequently of the highest importance to conciliate the inhabitants of the country where the troops happen to be, and to induce them to bring provisions and supplies. From this point of view an offence, which in other circumstances would be trivial, may require severe punishment.

**43. Fraudulent enrolment.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) without having obtained a regular discharge from the corps or department to which he belongs, or otherwise fulfilled the conditions enabling him to enrol or enter, enrolls himself in, or enters the same or any other corps or department or any part of the naval or air forces of India or the Territorial Army; or
- (b) is concerned in the enrolment in any part of the Forces of any person when he knows or has reason to believe such person to be so circumstanced that by enrolling he commits an offence against this Act;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

#### NOTES

1. An offence under this section should not be dealt with summarily under AA. s. 80, 83, 84 or 85.

2. Fraudulent enrolment like desertion is an offence, trial in respect of which is not barred by AA.s. 122 except in the case of a person, other than an officer, who has subsequently to the commission of the offence served continuously in an exemplary manner for not less than three years with any portion of the regular Army; for exemplary manner, see Regs for the Army para 466.

3. *Clause (a).*— For definition of 'corps' see AR 187(1).

4. Department; see AA.s.3(ix).

5. (a) A person who leaves one corps or department and enrolls himself in another does not prima facie commit the offence of deserting the service, though he irregularly and improperly exchanges one branch of that service for another. If, however, at the time of leaving his first corps or department, he had no intention of re-enrolling himself, and only did so as an afterthought, or if he absented himself to avoid a particular military service, e.g., service abroad, his offence is desertion, though a conviction on a charge framed under this section would also be legal. In deciding under which section a charge should be framed, the time which elapsed between the two acts will be an important element for consideration. In doubtful cases the charge should be framed under this clause.

(b) If the offender is charged with desertion, he should be tried in his original corps or department. If he is charged with the offence specified in this clause he may be tried either in his original corps or department, or in that into which he has fraudulently enrolled himself, and if not dismissed by the court which tries him may be held to serve in either corps or department. As a rule he should be tried in that corps or department in which it is intended to retain him.

(c) It will be noticed that the offence under this clause can be committed by a person who belongs to a corps or department and enrolls himself again in the same corps or department.

This clause is meant to meet the case of the larger corps and departments (e.g. the Army Service Corps) where a man might otherwise leave one portion of the corps or department and enrol himself in another with impunity.

6. The clause does not deal with the case of a sailor or airman who enrolls into any corps or department of the regular Army but merely gives the converse case of a person subject to AA enrolling in the Air Force or T.A. or entering the Navy. Sailors or airmen who enrol in any corps or department of the regular Army should be dealt with under AA.s. 44. Similarly a member of the Territorial Army who enrolls himself into any corps or department of the regular Army when such member is not subject to AA under AA.s. 2(1)(e) cannot be charged under this clause although he may be charged under AA.s. 44 for making a false answer if such be the case.

7. As to forfeiture of service towards pension or gratuity on conviction for this offence, See P and A Regs. and Pension Regs, where the conditions under which service so forfeited may be restored are also laid down.

8. *Proof of fraudulent enrolment may be given either*.—(a) Orally by a witness who was present when the accused was enrolled on the second enrolment, or

(b) By production by a witness, who can identify on oath the accused as the person named therein, of the original enrolment paper or a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper; AA.s. 141(2). Evidence must also be given that at the time the accused enrolled himself; he was then serving. This can be proved by a witness orally or by production of the earlier enrolment paper as above.

9. *Clause (b)*.—‘The Forces’; see AA.s. 3(xi).

10. ‘*So circumstanced*’.—The term implies that where he is subject to AA, so that he is guilty of fraudulent enrolment under AA.s. 43(a) or where, having previously served, he again enrolls without declaring the circumstances of his previous service, so that he commits an offence under AA.s. 44.

**44. False answers on enrolment.**—Any person having become subject to this Act who is discovered to have made at the time of enrolment a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

#### NOTES

1. (a) An offence under this section should not be dealt with summarily under AA.ss. 80, 83, 84 or 85.

(b) ‘*Having become subject*’.—It will be observed that the wording of this section differs from the wording of the other penal sections. This is essential since at the time the offence is committed the person is not, actually subject to AA; as he does not become so subject until he has signed the enrolment paper (AA.s. 14).

2. A person charged with “fraudulent enrolment” under AA.s. 43(a) should not also be charged under this section with “false answer” made on the occasion of such enrolment.

3. (a) The answer must be wilfully false; thus where a person might reasonably having been mistaken as to the fact of his having “served”, where, for instance, he was discharged as unfit before he had done duty or worn uniform, a conviction would not be upheld.

(b) Where the false answer is as to age, proof must be given by calling some one to prove that the accused is the person referred to in the birth-certificate or register: and a mere production of a birth certificate or register is not sufficient.

4. The falsity of the answer must be proved in accordance with the normal rules of evidence. The original enrolment paper must be produced at the trial, see AA.s. 141(1).

5. If false answers are given to two or more questions in the enrolment paper, each false answer should be included in a separate charge.

6. ‘Enrolling Officer’: see AR 7.

**45. Unbecoming conduct.**—Any officer, junior commissioned officer or warrant officer who behaves in a manner unbecoming his position and the character expected of him shall, on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and, if he is a junior commissioned officer or a warrant officer, be liable to be dismissed or to suffer such less punishment as is in this Act mentioned.

#### NOTES

1. An offence under this section should not be dealt with summarily under AA.ss. 83, 84 or 85.
2. For behaviour to be blameworthy under this section, it must be unbecoming both the accused's position and the character expected of him as an officer /JCO/WO i.e., his refusal to be swayed by considerations other than duty to the service does not, as the word is commonly understood, admit of different degrees or standards at any rate in that class and cannot therefore vary with his position i.e., the rank or appointment held by him except when the behaviour complained of is of a social character i.e., it offends the accepted rules of social behaviour and thus is unbecoming the character from a moral view point, in which case the culpability would depend upon the position held by the accused. Where behaviour complained of is not punishable under this section. A charge may lie under AA.s. 63, if such conduct is prejudicial both to good order and military discipline.
3. The offence under this section must be distinguished from the offence of disgraceful conduct of a cruel, indecent or unnatural kind under AA.s. 46(a). As a rule a charge should not be preferred under this section where such behaviour amounts to a specific offence under any other section of AA. The conduct is not brought within the scope of this section by merely applying to it the statutory language; and a court is not warranted in convicting unless of the opinion that the conduct proved was unbecoming of the accused's position and the character expected of him as an officer etc., having regard to its nature and to the circumstances in which it took place.
4. This section is not applicable to civilians with relative rank and subject to AA under sec. 2(1)(i).
5. This section is frequently invoked in cases where an officer has given stumer cheques. Such a charge should only be preferred where it is clear from the evidence from the bank that the officer acted in such reckless manner as is tantamount to fraud.
6. There can be no attempt to commit this offence as unbecoming conduct would include the act as well as an attempt to do such act.

**46. Certain forms of disgraceful conduct.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or
- (b) malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity; or
- (c) with intent to render himself or any other person unfit for service voluntarily causes hurt to himself or that person;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

#### NOTES

1. Offences under this section should not be dealt with summarily under AA.s. 80, 83, 84 or 85.
2. *Clause (a).*—The particulars of a charge of disgraceful conduct under this clause must specify the details of the act or acts alleged to constitute the disgraceful conduct of the kind charged. In the case of an officer accused, the same facts may constitute an offence either of disgraceful conduct under this clause or of unbecoming conduct under AA.s. 45; but see note 3 to AA.s 45.
3. In the absence of any evidence of a definite act of indecency or attempted indecency, mere words that an indecent or unnatural act was committed are not sufficient to constitute an offence under this clause though a charge may probably lie under AA.s. 63.
4. Disgraceful conduct of an unnatural kind ordinarily implies the commission or at least the attempted commission of an offence under IPC.s. 377. Therefore, in framing charges under this clause, the charge should invariably be laid for disgraceful conduct of an indecent kind unless the evidence permits of the averment in the particulars that an unnatural offence as ordinarily understood was committed or at least attempted.

5. To allege in a charge under this clause conduct of an indecent and unnatural kind would be bad for duplicity, since they are two separate offences: AR 30.

6. *Cruel*.—Cruelty usually involves the doing of some positive act, such as beating or killing or torturing. In most cases therefore the conduct alleged will amount to an offence under some other section of AA. But there are circumstances in which cruelty can be charged against a person who has culpably failed to do what he ought to have done e.g., where a definite duty was imposed upon a person to do something and he failed to perform that duty.

7. There can be no attempt to commit this offence. See note 7 to AA.s. 45.

8. *Clause (b)*.—To ‘malingering’ is to pretend illness or infirmity which does not exist, in order to escape duty.

To ‘feign’ disease or infirmity means that the accused person exhibits appearances resembling the genuine symptoms of disease or infirmity which, to his knowledge, are not due to such disease or infirmity, but, have been produced artificially for purposes of deceit; e.g., simulating fits or mental disease.

To ‘produce’ disease is wilfully to cause genuine disease to develop, e.g., by the infection of microbes or poisonous drugs. The involuntary production, aggravation, or prolongation of delirium tremens by intemperate habits, or of sexually transmitted diseases by immoral conduct, does not render a person liable under this clause; but see note 7(c) to AA.s. 42 as to concealment of sexually transmitted diseases.

Similarly a person who refuses to undergo a surgical operation or to be inoculated or vaccinated does not incur any liability under this clause or AA.s. 41 as any puncturing or cutting of the skin, mucuous membranes or tissues amounts to a surgical operation nor can he be punished for refusing to allow anesthetic to be administered.

9. *‘Intentionally’*.—In a case under this clause and clause (c), evidence must be given of the intent required therein but it would be sufficient to raise a presumption of that intention if the act in question was shown to have been done wilfully and not accidentally.

10. *Clause (c)*.—Intent: see note 9 above.

It is usual to prefer an alternative charge under AA.s. 63 to a charge under this clause alleging that the accused improperly or negligently rendered himself temporarily unfit for duty.

11. For the definition; of the term ‘voluntarily causing hurt’: See IPC.ss. 319 and 321 (part III).

12. ‘Any other person’ means any other person subject to AA and not a civilian.

13. Offences of this nature, even when committed in the presence of the enemy should be charged under this clause and not under AA.s. 34(c).

**47. Ill-treating a subordinate.**— Any officer, junior commissioned officer, warrant officer or non-commissioned officer who uses criminal force to or otherwise ill-treats any person subject to this Act, being his subordinate in rank or position, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

#### NOTES

1. (a) An offence under this section should not be dealt with summarily under AA.ss. 80, 83, 84 or 85.

(b) A sepoy cannot commit an offence under this section.

2. (a) For definitions of ‘force’ and ‘criminal force’: See IPC.ss. 349 and 350 (part III).

(b) An accused charged under this section with using criminal force may be convicted of an attempt to use criminal force or assault as a special finding under AA.s. 139 (3) and (8).

3. Using criminal force or ill-treatment provided for by this section need not necessarily be consequent on or connected with the superior status of the accused. The only essentials necessary to constitute an offence under this section are—

(a) that the accused used criminal force to or ill-treated a person subject to AA. subordinate to him in rank or position; and

(b) that the accused was acquainted with the identity of the person against whom he used criminal force or whom he ill-treated.

4. It is an offence under this section for one NCO to use criminal force or ill-treat another who is not his superior in rank or position. Where two NCOs of equal rank are concerned, evidence must be led to prove that the person against whom criminal force was used was junior to the accused. Where the two are of equal seniority or where one sepoy strikes another, the charge should be laid under AA.s. 63 or 69.

5. Where the person against whom criminal force is alleged to be used is a sentry, the charge should be preferred under AA.s. 36(a) and not under this section.

**48. Intoxication.**—(1) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and, if he is not an officer, be liable, subject to the provisions of sub-section (2), to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

(2) Where an offence of being intoxicated is committed by a person other than an officer when not on active service or not on duty, the period of imprisonment awarded shall not exceed six months.

#### NOTES

1. Intoxication may be induced by opium or any similar drug, as well as by liquor. This section creates only one single offence, viz. intoxication, and in all cases, whether the act was committed on duty or not on duty, the charge should be "intoxication". If the offence was committed on duty or after the accused had been warned for duty, the fact that the offence was so committed and the nature of the duty should be specified in the particulars of the charge as the character of the offence, from a military point of view, and therefore its proper punishment is materially affected by the circumstance.

2. Intoxication will be regarded as having the ordinary meaning attached to it in civil life i.e., what an ordinary reasonable person would consider to be such and the fact that an offender is capable or incapable of performing his duty is not a decisive or exclusive test of drunkenness or sobriety. It is, however, one of the tests which should be applied by the court.

3. A person suspected of being intoxicated cannot be put through any drill or test for the purpose of ascertaining his condition; [Regs Army for the Army para 393(b)]. As such the best evidence in such a charge is the direct stated evidence of witness (s).

4. For instructions as to the treatment of a person in arrest for being intoxicated see Regs Army para 393(a).

5. The offence of intoxication is one which cannot be tried jointly.

6. Nothing can justify a person subject to AA using criminal force to or assaulting a superior, and great care is therefore enjoined to be taken to avoid bringing intoxicated persons in contact with their superiors. Mere abusive and violent language used by an intoxicated person, as the result of being taken into custody, should not be used as the ground for framing a charge of using threatening or insubordinate language to a superior officer under AA.s. 40(b) or (c). If a court-martial is considered necessary, the charge should be framed under this section, the language being treated as in the nature of riotous conduct only, and to that extent aggravating the offence.

**49. Permitting escape of person in custody.**—Any person subject to this Act who commits any of the following offences, that is to say—

- (a) when in command of a guard, picquet, patrol or post, releases without proper authority, whether wilfully or without reasonable excuse, any person committed to his charge, or refuses to receive any prisoner or person so committed; or
- (b) wilfully or without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to keep or guard;

shall, on conviction by court-martial, be liable, if he has acted wilfully to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and if he has not acted wilfully to suffer imprisonment for a term which may extend to two years or such less-punishment as is in this Act mentioned.

#### NOTES

1. Where the offence is wilful, the charge should not be dealt with summarily under AA.s. 80, 83, 84 or 85.

2. (a) Where a doubt exists as to the accused having acted wilfully, he should be charged with having acted without reasonable excuse.

(b) An act or omission is wilful if it is done or made by a person with the intention of allowing the escape of a person committed to his charge or whom it is his duty to guard or keep.

(c) If the charge is one of wilfully committing the offence, the court may, if it is not satisfied that the act was wilful, make a special finding under AA.s. 139(7) that the accused acted without reasonable excuse.

3. '*Without proper authority*';—(a) These words are in the nature of an exception and it will rest on the accused to show that he had the proper authority.

(b) The court may use their military knowledge (AA.s. 134) with respect to whether any authority alleged by the accused to exist was or was not sufficient.

4. '*Any person*'.—The person improperly released or allowed to escape need not be a person subject to AA.

5. A deserter or absentee without leave who surrenders, himself and who is being conducted by a NCO to rejoin his unit, is not "committed to the charge" of the NCO conducting him within the meaning of this section, but it may well be the NCO's duty to "keep or guard him". It will be noticed that, for the purpose of clause (a), the person released must have been committed to the charge of the accused, while for the purpose of clause (b) the person allowed to escape need only have been a person whom the accused was under a duty to keep or guard. The offender under clause (a) must be in the command of the guard, piquet, patrol or post, and previously have had the released person committed to his charge; while under clause (b) the offender who allows a person to escape need not have any such command.

**50. Irregularity in connection with arrest or confinement.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) unnecessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation; or
- (b) having committed a person to military custody fails without reasonable cause to deliver at the time of such committal, or as soon as practicable and in any case within forty-eight hours thereafter, to the officer or other person into whose custody the person arrested is committed, an account in writing signed by himself of the offence with which the person so committed is charged;

shall on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

#### NOTES

1. *Clause (a)*:— In support of a charge laid under this clause for either of the offences therein created the prosecutor will have to prove the facts which either show or enable the court to infer that the accused could have brought the person under arrest or in confinement to trial or brought his case before the proper authority for investigation. If these are proved the court may infer that it was unnecessary to keep the person, in question, in custody in the absence of an explanation by the accused. As to "the proper authority", see AR 2(d). See also Regs for the Army para 408(b).

2. AR 27(3) prohibits an accused being detained in military custody which includes open arrest for longer than 2 months without the sanction of the COAS or of other authority e.g. GOC-in-C and for longer than 3 months without the approval of the Central Government.

3. *Clause (b)*:—For definition of military custody, see AA.s. 3(xiii).

4. When a guard etc., commander wilfully or without reasonable excuse refuses to receive a person committed to his charge, he commits an offence under AA.s. 49 (a) in respect of his improper refusal. The fact that no account in writing of the type required in this clause was received by the guard etc., commander from the person committing the person at the time of committal or within 48 hours thereafter would not entitle the guard commander to refuse custody or charge or to effect the subsequent release of any such person.

5. As regards powers of arrest and confinement and ancillary matters see AA.s. 101 and 107 and Regs for the Army paras 391 to 397. Also see Regs Army para 401.

**51. Escape from Custody.**—Any person subject to this Act who, being in lawful custody, escapes or attempts to escape, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.



## NOTES

1. The term 'lawful custody' in this section means not only military custody as defined in AA.s. 3 (xiii) but any lawful custody; so that a person subject to AA may be convicted under this section when escaping or attempting to escape from a police officer who has under AA.s. 105 (2) arrested him as a suspected deserter. Similarly when a person is held by the Provost Marshal or a person legally exercising authority under him or on his behalf under AA.s. 107, he may be charged with an offence under this section.

2. (a) As military custody includes open arrest, a person escaping or attempting to escape while in open arrest could be charged under this section.

(b) A person undergoing field punishment is in lawful custody within the meaning of this section although he is not in arrest. Care therefore must be taken, when framing a charge under this section to ensure that the particulars alleged correspond with the statement of offence.

(c) Confinement to the lines is not lawful custody for the purposes of this section.

3. A person subject to AA, who escapes from arrest and absents himself without leave, may be charged with, and convicted of, both under this section, and of the subsequent desertion or absence without leave; under AA.s. 38(1) or 39(a).

4. A prisoner is said to 'escape' when he unlawfully goes out of sight beyond the control of the person in whose custody he is placed.

5. Attempt to escape is itself made a substantive offence and a charge for the same should be preferred under this section.

**52. Offences in respect of property.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) commits theft of any property belonging to the Government, or to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law; or
- (b) dishonestly misappropriates or converts to his own use any such property; or
- (c) commits criminal breach of trust in respect of any such property; or
- (d) dishonestly receives or retains any such property in respect of which any of the offences under clauses (a), (b) and (c) has been committed, knowing or having reason to believe the commission of such offence; or
- (e) wilfully destroys or injures any property of the Government entrusted to him; or
- (f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

## NOTES

1. Offences under this section should not be dealt with summarily under AA.ss. 80, 83, 84 or 85. Before trial is ordered on charges under this section, reference should be made to the Dy JAG Command/DJAG Corps concerned: See Regs Army paras 432 and 459.

2. A person charged before a court-martial with an offence under clause (a), (b), (c) or (d) of this section may be found guilty of any other of these offences with which he might have been charged (AA.s. 139(5)).

3. *Clause (a):* (a) For definition of theft see IPC.s. 378 in part III.

(b) 'Any property' means any moveable property.

(c) See IPC.s. 27 for the implication of the term "Possession".

4. (a) If the stolen property has been recovered, it should be produced in court and identified by its owner and by any other witnesses who mention it in their evidence. If it has not been recovered its value or approximate value should be entered in the particulars of the charge and proved in evidence so that the court, if it convicts the accused, may add an award of stoppages to its sentence.

(b) where an offender is sentenced by court-martial to be placed under stoppages in respect of any property stolen, etc., by him, due allowance must be made, in enforcing such stoppages, for money, or the value of any property found upon him and appropriated by way of restitution under AA.s. 151.

5. Captured enemy property becomes the property of the Government.

6. (a) One of the essential ingredients of the offence of theft is that the property must be taken out of the possession of another person. It is not necessary that the property should have been owned by such person. When a person has the 'physical' or 'constructive' possession of property, dishonest removal of the same from the possession of such person without his consent constitutes theft.

(b) Stealing from a person subject to military law is regarded as a particularly disgraceful military offence, considering that in the daily routine of barrack life, persons must constantly leave exposed their arms, uniform and equipment as well as their private property, such as money, watches, etc., trusting to the honour of their comrades.

7. For the presumptions which a court may draw in respect of recent possession of stolen property, see IEA.s. 114 illustration (a).

8. If the property belongs to some person or institution not included in the categories contained in this clause, the accused can only be charged under AA.s. 69 or 52(f) or dealt with by the civil power.

9. Every instance of theft should be laid as a separate charge unless they form part of the same transaction.

10. *Clause (b)*: (a) For civil offence of criminal misappropriation see IPC.s. 403 (Part III).

(b) 'Any property' means any moveable property.

(c) For definition of 'dishonestly' see IPC.s. 24. Also see IPC.s. 23.

11. (a) '*To misappropriate*' means to set apart for or to assign to the wrong person or a wrong use.

(b) '*Converts to his own use*.—There must be actual conversion of the thing appropriated to the use of some person other than the person entitled thereto. Mere retention of property would not warrant a conviction under this clause; unless there is evidence that the accused used that property; for instance when a clerk received certain sums on various dates but entered them in the accounts on each occasion some days after and it was found that the clerk was not in difficulties and did not use the amount, the mere retention by him of the money for some days would not constitute an offence under this clause.

12. *Difference between theft and criminal misappropriation*.—In theft the object of the offender always is to take property which is in the possession of a person out of that person's possession; and the offence is complete as soon as the offender has moved the property in order to dishonest taking of it. In criminal misappropriation, the offender is already in possession of the property; and is either innocently or lawfully in possession of it, because either he has found it or it is entrusted to him, or his possession, if not strictly lawful, is not punishable as an offence because he has acquired it under some mistaken notion of right in himself or of consent given by another. It is the dishonest misappropriation or conversion to his use that constitutes the offence.

13. (a) A mere error or irregularity in accounts or a mistaken mis-application of property does not constitute an offence under this clause. There must be an intent to defraud on the part of the accused either for the benefit of himself or some other person. This must be particularly remembered in the case, for example, of an NCO's accounts getting into confusion through the neglect or carelessness of his superiors. Neglect or failure to supervise that the account is maintained strictly according to service regulations frequently leads to loss of funds and property, and also exposes the subordinates to grave temptation in relation to their accounts.

(b) To secure a conviction on a charge under this clause it is not necessary for the prosecution to prove that the accused intended permanently to deprive the public or other owner of the property, provided the court is satisfied that the accused or some other person benefited and that the owner of the property suffered. In other words, a person may still be guilty of the offence, even though he has repaid the

money which he had misappropriated, provided that at the time of such misappropriation he had a dishonest intent. The term 'dishonest misappropriation' includes temporary as well as permanent misappropriation of that description. See IPC.s. 403 explanations 1.

(c) If no evidence is forthcoming as to the particular mode of misappropriation, the court may, in the absence of explanation from the accused, infer that the property was misappropriated from the fact of its not having been properly utilised or accounted for.

14. Each instance of misappropriation should be in a separate charge, unless they all form part of the same transaction.

15. The value of the property alleged to have been misappropriated should be entered in the particulars of the charge and proved in evidence so that the court, if it convicts the accused may award stoppages.

16. *Clause (c):* Criminal breach of trust; for definition, see IPC., s. 405.

17. (a) To constitute an offence under this clause, there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. There must be an entrustment which, in its most general significance, imports a handing over the possession for some purpose which may not imply the conferring of any proprietary right at all.

(b) A person is said to be entrusted with dominion over property when it remains legally in the owner's possession but he is given a limited authority to deal with it.

18. *Criminal misappropriation and criminal breach of trust.*—In criminal misappropriation the property comes into the possession of the offender by some casualty or otherwise, and he afterwards misappropriates it. In the case of criminal breach of trust the offender is lawfully entrusted with the property and he dishonestly misappropriates the same or wilfully suffers any other person to do so, instead of discharging the trust attached to it.

19. *Clause (d):* Dishonestly.— see IPC.s. 24. Also see IPC.s. 23.

20. The offence of dishonestly receiving property under this clause has practically the same meaning as under IPC.s. 411 except that this clause is only limited to property of the description mentioned in clause (a).

21. *Receives or retains.*— A person cannot be convicted of receiving if he had no guilty knowledge at the time of receipt. But he is guilty of 'retaining' if he subsequently knows or has reason to believe that the property was obtained by theft, criminal misappropriation or criminal breach of trust. The offence of dishonest retention may be completed without any guilty knowledge at the time of receipt. A person who is proved to have stolen etc., property cannot be convicted of retaining it.

22. *Clause (e): Wilfully destroys or injures*—A charge for destroying or injuring the property here mentioned must be laid under this clause, and not under AA.s. 69. The prosecutor must adduce evidence which will either prove, or enable the court to infer, that the injury was not accidental or done by some other person. If the injury appears to be the result of neglect, it will be for the court to determine whether the neglect was wilful and intended to injure the property, or was mere carelessness. In the latter case no offence under this clause would be committed.

The pecuniary amount of damage or injury caused must be stated in the particulars of the charge and proved in evidence by calling an expert witness if necessary, to enable the court to award stoppages in case of conviction.

23. *Clause (f): 'Does any other thing'.*—An act or omission which would fall under any other clause or any other section of AA should not be made the subject matter of a charge under this clause. But in doubtful cases, the charge should be laid under this clause.

24. (a) *'With intent to defraud'.*— A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. IPC.s. 25.

(b) The terms 'fraud' and 'defraud' are not found defined in the IPC. The word 'defraud' is of double meaning in the sense that it either may or may not imply deprivation. Whenever the words 'fraud' or

‘intent to defraud’ or ‘fraudulently’ occur in the definition of a crime two elements at least are essential to the commission of the crime; namely, first, deceit or an intention to deceive or in some cases mere secrecy; and secondly, either actual injury or possible injury or an intent to expose some person either to actual injury or to a risk of possible injury by means of that deceit or secrecy. This intent is very seldom the only or the principal intention entertained by the fraudulent person, whose principal object in nearly every case is his own advantage. The “injurious deception” is usually intended only as a means to an end, though this does not prevent it from being intentional. A practically conclusive test as to the fraudulent character of a deception for criminal purposes is this; did the author of the deceit derive any advantage from it, which he could not have had if the truth had been known? If so, it is hardly possible that advantage should not have had an equivalent in loss, or risk of loss to some one else; and if so, there was fraud.

(c) A general intention to defraud, without the intention of causing wrongful gain to one person or wrongful loss to another, would be sufficient to support a conviction. In order to prove an intent to defraud it is not at all necessary that there should have been some person defrauded, or who might possibly have been defrauded. A person may have an intent to defraud, and yet there may not be any person who could be defrauded by his act. It should, however, be noted that an intent only to deceive is not enough.

(d) When it is material to prove an intent to defraud, evidence may be given of similar offences by the accused.:

25. *Wrongful loss or wrongful gain*: See IPC. s. 23 (part III).

26. (a) In order to constitute an offence under this clause, it is not sufficient to couple the description of an act which can bear an innocent construction with an averment of intent to defraud. The act alleged to have been committed with intent to defraud must itself appear from the particulars of the charge to be a wrong act though it need not necessarily amount to an offence under the ordinary criminal law.

(b) Mere irregularity in accounts, due to incompetence or ignorance of book-keeping, would not be sufficient under this clause, to constitute an offence as no fraudulent conduct is involved. However acts such as, with intent to defraud, presenting for signature acquaintance rolls, containing entries known to be false; or charging money for railway warrants; tickets, or vouchers, to which a person is entitled free of charge, would all amount to offences of a fraudulent nature for the purposes of this clause.

**53. Extortion and Corruption.**—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) commits extortion; or

(b) without proper authority exacts from any person money, provisions or service;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

#### NOTES

1. *Clause (a)*. (a) For definition of extortion see IPC.s. 383.

(b) Extortion is distinguished from theft in that in the case of extortion, the consent is obtained by putting the person, in possession of property, in fear of injury to him or to any other, whereas in theft the offender’s intention is always to take without that person’s consent. Further, the property which is obtained by extortion is not limited, as in theft, to moveable property only.

2. *Clause (b)*.—Without proper authority: see note 3 to AA.s. 49.

3. Any person means a person whether subject to AA or not.

**54. Making away with equipment.**—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) makes away with, or is concerned in making away with, any arms, ammunition, equipment, instruments tools, clothing or any other thing being the property of the Government issued to him for his use or entrusted to him ; or

(b) loses by neglect anything mentioned in clause (a); or

(c) sells, pawns, destroys or defaces any medal or decoration granted to him,

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend in the case of the offences specified in clause (a) to ten years, and in the case of the offences specified in the other clauses to five years, or such less punishment as is in this Act mentioned.

#### NOTES

1. *Clause (a).*— In the absence of some positive act of making away with e.g. pawning, selling etc., a charge of making away with should not be preferred under this clause. When, therefore, articles of the description in the clause are found to be merely deficient through the culpability of a soldier, it would be proper to prefer a charge under clause (b) of losing by neglect the articles in question. The particular mode of making away with should be alleged in the particulars although it does not affect the kind of offence, but only its gravity in relation to the amount of the sentence to be imposed on conviction.

2. Before an accused can be convicted under this clause, evidence must be adduced at the trial that he had been issued with the articles either by

- (a) examining a witness who actually issued the articles to the accused, or
- (b) by a witness on oath producing any receipt for the articles and proving the signature of the accused, or
- (c) by oral evidence that on a certain date prior to the offence the accused was in possession of those articles e.g., at a kit inspection.

3. (a) A charge under clause (a) or (b) of making away with or losing etc., property not mentioned in those clauses e.g., mess property or property of a comrade would be bad though if the act amounted to theft, dishonest misappropriation or criminal breach of trust, it would, be punishable under AA.s. 52 or 69; if the facts show willful act or neglect, the person might in certain circumstances be charged with an offence under AA.s. 63.

(b) Any other thing should be ejusdem generis i.e., part of the accused's kit which he is bound to maintain or his general military equipment supplied by the Government; such 'other thing' should be specified in the statement and particulars of the charge.

4. Clothing in this clause may include hospital clothing issued to a person subject to AA, or civilian clothing issued from military sources.

5. Whenever it is desired that the offender should, on conviction of an offence under this clause or clause (b), be awarded stoppages under AA.s. 71(1) in respect of the value of the articles which need be made good to the Govt/ public, then, the value must be stated in the particulars of the charge [AR 30(6)] and proved as follows:

(a) Value of an article having an official value will be proved by calling a witness who can, on oath, estimate the value (inclusive of authorised departmental expenses) of the article at the date of the offence upon the basis of its age and/ or condition and by reference to the regulations which should be produced for fixing the value of the article at that age or in that condition.

(b) When the article has not an official value, competent evidence is required to prove the approximate value.

(c) When an article has been damaged but not rendered unserviceable, competent evidence is required to prove the pecuniary amount of the damage, which will be either the cost of repairing it, if it can be repaired, or the cost of repair plus any ultimate loss of value due to the act of the accused.

6. *Clause (b).*—This is not intended to punish a person for a deficiency in his kit occasioned by accident or mere carelessness but for loss by culpable neglect. On the other hand, the fact that a person has not got his arms, service necessities, etc., at a time when it was his duty to have them (i.e., at a kit inspection), is *prima facie* evidence of his having lost them by neglect. The onus of proving "neglect" always remains on the prosecution. But once the loss is proved, the court is entitled to expect the accused to offer some explanation of it, and if he gives none, it is open to the court to conclude that the loss must have been due to his negligence. If he gives an explanation which may reasonably be true and which if true is inconsistent with negligence, even if the court is not convinced of its truth, he must be acquitted, since a reasonable doubt as to his negligence then remains.

7. Where a court of inquiry (as laid down in AA.s. 106) has been held and has found a person to be deficient in certain articles, then upon his trial under this clause a certified copy of the record in the regimental books on IAFD-918, showing that such articles were deficient is *prima facie* evidence that they were deficient and of their value, if stated [AA.s. 142(3) and (4)]. If no evidence, except IAFD-918 is obtainable, the prosecution would be justified in proceeding on that alone, and if no evidence is given on the part of the accused to disprove the facts stated therein, the court may convict. Where, however, the accused gives or produces evidence in contradiction of the declaration of the court of inquiry with regard to any of the articles in question, it will become necessary for the prosecution to produce other evidence in support of its case in so far as such articles are concerned—for which purpose the court might, if necessary, grant an adjournment under AR 82. If for any reasonable cause, such as lapse of time since the deficiency arose, no witnesses are available to rebut the evidence produced by the accused, the court must use its discretion as to its finding in respect of the articles in question. In all cases where IAFD-918 is not produced at the trial evidence must be produced to show that at some previous specified date the accused has been in possession of the articles alleged to be deficient. In cases of desertion or absence without leave the form will usually show as missing some articles which the person in fact brings back with him. The court must not, of course, convict him in respect of articles so returned if in serviceable condition or those the value of which has not to be made good to the public.

8. Losing by neglect the property of a comrade, or a decoration, is not an offence under this clause as that class of property or decoration is not mentioned therein. Also see notes 3 and 4 above.

9. As to stoppages and evidence of value of the property, see note 5 above.

**55. Injury to property.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) destroys or injures any property mentioned in clause (a) of section 54 or any property belonging to any military, naval or air force, mess band or institution, or to any person subject to military, naval or air force law, or serving with or attached to, the regular Army; or
- (b) commits any act which causes damage to, or destruction of, any property of the Government by fire; or
- (c) kills, injures, makes away with, ill-treats or loses any animal entrusted to him;

shall, on conviction by court-martial, be liable, if he has acted wilfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and if he has acted without reasonable excuse, to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

#### NOTES

1. *Clause (a).*—For special finding see AA.s. 139(7).

2. *“Destroys or injures”.*—A charge for damaging or injuring the property here mentioned must be laid under this section and not under AA.s. 69. The prosecutor must adduce evidence which will either prove, or enable the court to infer, that the destruction or injury was wilful and not accidental. If the injury appears to be the result of neglect, it will be for the court to determine whether the neglect was wilful and intended to injure the property, or was mere carelessness. In the latter case no offence under this section would be committed.

3. See note 5 to AA.s. 54 regarding proving the value of the property destroyed or injured.

4. *Clauses (b) and (c):* To ‘constitute an offence under either of these clauses, the act etc., must be either committed wilfully or without reasonable excuse.

**56. False accusations.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) makes a false accusation against any person subject to this Act knowing or having reason to believe such accusation to be false; or
- (b) in making a complaint under section 26 or section 27 makes any statement affecting the character of any person subject to this Act, knowing or having reason to believe such statement to be false or knowingly and wilfully suppresses any material facts;



shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

#### NOTES

1. Offences under this section should not be dealt with summarily under AA.ss. 80, 83, 84 or 85.

2. *Clause (a).*—A mere false statement not involving an accusation (e.g., a letter to a friend containing insinuations against a non-commissioned officer) is not within this clause. This clause implies an accusation being made to some superior authority which would lead to the superior exercising his authority by enquiry or otherwise or the accusation must mean some assertion made publicly or to another person, which, if true, would expose the person respecting whom it is made to punishment or to moral censure. An accusation may be either verbal or in writing.

3. Before an accused can be convicted of a charge under this clause, it must be proved that the accusation was made against the person named in the particulars of the charge, that it was false and that the accused knew or had reason to believe that it was false. For definition of 'reason to believe' see IPC.s. 26.

4. *Clause (b).*—(a) It is not necessary that the false statement affecting the character of an officer or other person should be directly related to the subject of the complaint. It is sufficient if the false statement is calculated to create prejudice against the officer etc., with reference to whom the complaint is addressed.

(b) To suppress knowingly and wilfully any material facts in connection with complaints for the redress of wrongs under AA.ss. 26 and 27 is an offence under this clause.

**57. Falsifying official documents and false declarations.**—Any person subject to this Act who commits any of the following offences, that is to say—

- (a) in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy; knowingly makes, or is privy to the making of any false or fraudulent statement; or
- (b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or
- (c) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or
- (d) where it is his official duty to make a declaration respecting any matter knowingly makes a false declaration; or
- (e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement;

shall, on conviction by court-martial be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

#### NOTES

1. (a) An offence under this section should not be dealt with summarily under AA.ss. 80, 83, 84 or 85. Before trial is ordered on charges under this section, reference should be made to the Dy JAG Command/DJAG Corps concerned.

(b) This section refers to strictly official documents.

2. *Clauses (a) and (b).*—A report (which must be in writing), return, certificate or other document mentioned herein must be one executed by the accused in his capacity as a person subject to AA and not in some civil capacity. The 'other document' which should be ejusdem generis, should be specified in the statement and particulars of the charge. A trivial error in the report should not, in the absence of fraud or bad faith, be made the ground of a charge under these clauses.

3. '*Made by him*'.—Making a document means creating or bringing it into existence e.g., writing or typing it as distinguished from sealing, signing or otherwise executing it.

4. In determining whether or not it was the duty of the accused to ascertain the accuracy of the report, etc., referred to in the charge, the court may use their military knowledge (AA. s. 134).

5. (a) If a person makes false entries as to payments made in a book which it was his duty to keep in his official capacity he may be charged with knowingly making false statement under clause (a) or, if it can be shown that he intended to defraud by means of the entries, he may be charged with knowingly making a fraudulent statement. Similarly, if he omits to make in the book entries of payments made by him or to him he may; if the evidence justifies such a course, be charged with knowingly making such omissions with intent to defraud under clause (b).

(b) When the accused has on the same occasion made a number of fraudulent entries on an acquittance roll, etc an omnibus charge under AA. s. 52(f) would be preferable to a number of charges under clause (a).

6. *Knowingly*.—See note 18 to AA. s. 34.

7. It is wrong to make a statement made by an accused in defence or in explanation of an offence imputed to him, the subject of a charge against him, such statement or explanation is strictly analogous to a plea of 'not guilty' before a court-martial, thus casting the burden of proof on the other side, and the accused is at liberty to make at any preliminary inquiry the best excuse he can.

8. *Clause (c)*.—The suppression, etc., of a document is not an offence under this clause if it is affected only with intent to deceive and not to defraud. The question as to the duty of the accused to preserve or produce the document will be determined by the court using their military knowledge. The particulars of a charge under this clause should show the capacity or appointment on account of which it was the accused's duty to produce or preserve the document.

9. *Clause (e)*.—(a) Other advantage or privilege must be of a similar kind.

(b) Obtaining pension or other such advantage may be for himself or any other person whether subject to AA or not.

**58. Signing in blank and failure to report.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) when signing any document relating to pay, arms, ammunition, equipment, clothing, supplies or stores, or any property of the Government fraudulently leaves in blank any material part for which his signature is a voucher; or
- (b) refuses or by culpable neglect omits to make or send a report or return which it is his duty to make or send;

shall, on conviction by court-martial be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

#### NOTES

1. An offence under this section should not be dealt with summarily under AA.ss. 80, 83, 84 or 85.

2. *Clause (b)*.—In a charge under clause (b), the particulars must show that it was the duty of the accused to make or send the report or return, but where the position (appointment etc.) of the accused is proved the court may use their military knowledge to infer his duty. If the report or return was one for which the superior officer had no right to call, it is not an offence to refuse to make or send it.

3. The report must be in writing; clause (b) does not relate to a verbal report. The neglect must be culpable, i.e., something more than mere forgetfulness or mistake; see note 3 to AA. s. 63.

**59. Offences relating to court-martial.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) being duly summoned or ordered to attend as a witness before a court-martial, wilfully or without reasonable excuse, makes default in attending; or
- (b) refuses to take an oath or make an affirmation legally required by a court-martial to be taken or made; or
- (c) refuses to produce or deliver any document in his power or control legally required by a court-martial to be produced or delivered by him; or

- (d) refuses when a witness to answer any question which he is by law bound to answer; or
- (e) is guilty of contempt of court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court ;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

#### NOTES

1. An offence under this section should not be dealt with summarily under AA.ss. 80, 83, 84 or 85.
2. (a) There is no restriction debarring a court-martial from trying any of the offences specified in this section when committed in respect of itself. In all cases reported by court-martial under AR 150, and in many other cases the members are, however, individually disqualified, under AR 39, from sitting at the second trial so that the result is practically the same. A CO cannot, except with the sanction of superior authority, or in a grave emergency, try by SCM an offence under this section committed against his own authority when sitting at another trial. See AAs. 120(2).
- (b) If a person subject to AA is tried for any of the offences specified in this section when committed in respect of a court-martial other than a court-martial held under AA, the charge should be framed under AA. s. 63; as such a court is not a court-martial for the purposes of AA ; see AA. s.3 (vii).
3. See AR 150 and notes for manner of dealing with similar offences when committed by civilians or persons amenable to naval or air force law.
4. As a rule, courts should accept an apology sufficient to vindicate their dignity without resorting to extreme measures.
5. *Clause (a).*—‘Duly summoned or ordered’: see AA. s. 135. A person subject to AA who fails to attend the taking of summary of evidence when ordered to do so can be tried under AA. s. 41 or 63 and not under this section, which deals with court-martial.
6. (a) Wilfully or without reasonable excuse: for definition see note 2 to AA.s. 49.
- (b) For special finding, see AA. s. 139(7).
7. *Clause (b).*—(a) A person who, for reasons of sincerity of which the court is satisfied, refuses to take an oath, must be given the opportunity of making an affirmation; see AA. s. 131 (2) and AR 140. The offence is not complete unless there is proof of a refusal both to take the oath and to make an affirmation provided option so to do is given to the accused. The charges of refusing to take an oath legally required by a court-martial to be taken and refusing to make an affirmation legally required by a court-martial to be made; may, therefore, be properly drawn in the alternative.
8. *Clause (c).*—See IEA. ss. 123-124 which deal with privilege of official documents. Also see IEA s. 162.
- When a witness is directed by summons to produce a document which is in his possession or power, he must bring it to court, notwithstanding any objection that he may have with regard to its production or admissibility. After this has been done it rests solely with the court to hear the objection or the claim as to privilege, and to decide whether it should be allowed.
9. *Clause (d).*—Because a person is competent to give evidence, he cannot be compelled to answer every question he may be asked when giving evidence and which is relevant to the matter in issue. For instance, on an incriminating question being put to a witness, he is entitled to ask to be excused from answering it, and if after he has asked to be excused, the court compels him to answer (as they are entitled to do) his answer cannot be proved against him at any criminal proceedings except a prosecution for giving false evidence by such answer; see IEA. s. 132.
10. *Clause (e).*—A court-martial begins to sit from the time the members take their seats for the purposes of trial, even before they are sworn/affirmed, and anything which would be a contempt after the court was sworn/affirmed would be a contempt once the members have so taken their seats.
11. See also note 2 above.

**60. False evidence.**—Any person subject to this Act who, having been duly sworn or affirmed before any court-martial or other court competent under this Act to administer an

oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

## NOTES

1. (a) An offence under this section should not be dealt with summarily under AA.s. 80, 83, 84 or 85.

2. (a) The offence specified in this section is in many respects similar to the offence of giving false evidence under IPC. s. 191.

(b) The courts referred to in this section are.—

(i) Court-martial.

(ii) A court of inquiry on illegal absence under AA. s. 106.

(iii) A court of inquiry on recovered prisoners of war : AA. 191 (2) (d) and AR 181.

(iv) Any other court of inquiry when the officer assembling the court has directed that the evidence be recorded on oath or affirmation: AA. s. 191 (2) (d) and AR 181.

(c) Statement at a summary of evidence cannot be given on oath. If, therefore, false evidence is given at a summary of evidence the charge should be framed under AA. s. 63.

3. The proceedings of the court-martial or court of inquiry before which false evidence is alleged to have been given are not admissible as evidence that the accused gave the evidence as charged. The officer who recorded the proceedings, or some other person, who heard the evidence given, must prove by oral evidence this fact and that the accused was duly sworn/affirmed. He may however, use the record to refresh his memory, (IEA. ss. 159 and 160). The proceedings of the court are, however, admissible to prove that the occasion on which the alleged false statement was made was a properly constituted court-martial or court of inquiry.

4. A charge under this section cannot be preferred when the false evidence is given at a naval or air force court-martial though in such cases a charge under AA. s. 63 or 69 could be preferred.

**61. Unlawful detention of pay.**—Any officer, junior commissioned officer, warrant officer or non-commissioned officer who, having received the pay of a person subject to this Act unlawfully detains or refuses to pay the same when due, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

## NOTES

1. This offence cannot be committed by a sepoy.

2. This section is a corollary of AA. s. 25 which provides that the pay of any person subject to AA shall be paid without any deductions other than those authorised by or under AA or any other Act. For deductions authorised by or under AA see AA. ss. 90, 91 and AR 205.

3. AA. s. 90(c) also makes provision for penal deductions to be made from the pay and allowances of an officer to make good any sum which has unlawfully been retained or withheld by him but recovery under that clause does not require disciplinary action. However, as there is no similar provision in AA. s. 91, a JCO, WO or NCO must be tried for the offence before he can be placed under stoppages.

**62. Offences in relation to aircraft and flying.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) wilfully or without reasonable excuse damages, destroys or loses any aircraft or aircraft material belonging to the Government; or
- (b) is guilty of any act or neglect likely to cause such damage, destruction or loss; or
- (c) without lawful authority disposes of any aircraft or aircraft material belonging to the Government; or
- (d) is guilty of any act or neglect in flying, or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person; or

- (e) during a state of war, wilfully and without proper occasion, or negligently, causes the sequestration, by or under the authority of a neutral State, or the destruction in a neutral State of any aircraft belonging to the Government;

shall, on conviction by court-martial, be liable, if he has acted wilfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned, and, in any other case, to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

#### NOTES

1. (a) Offences under this section should not be dealt with summarily under AA.ss. 80, 83, 84 or 85.
- (b) Before trial is ordered on charges under this section, reference should be made to the Dy JAG of Command or DJAG Corps concerned; see Regs for the Army para 459.
2. As the terms 'aircraft' and 'aircraft material' have not been defined in AA, they should, be construed in the light of the definitions given in the Air Force Act which are as under :  
  
 "aircraft" includes aeroplanes, balloons, kite balloons, airships, gliders or other machines for flying.  
  
 "aircraft material" includes any engines, fittings, guns, gear, instruments or apparatus for use in connection with aircraft, and any of its components and accessories and petrol oil, and any other substance used for providing motive power for planes.
3. The word 'neglect' in this section means culpable neglect; see note 3 to AA. s. 63.
4. Wilfully or without reasonable excuse. See note 2 to AA. s. 49.
5. If an accused is charged under this section with wilfully damaging an aircraft he may be found guilty of damaging it without reasonable excuse under AA. s. 139(7) if the evidence justifies this course.

**63. Violation of good order and discipline.**—Any person subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

#### NOTES

1. As a rule a charge should not be preferred under this section where special provision for the offence is made elsewhere in AA. In a proper case, however, an alternative charge may be added under this section.
2. A charge under this section must recite its actual words. *i.e.*, there must be charged an "act" or "omission" "prejudicial to good order and military discipline". But, of course, an act or omission is not brought within the scope of the section by merely applying to it the statutory language; and a court is not warranted in convicting unless it is of the opinion that the act, etc., proved was prejudicial both to good order and to military discipline, having regard to its nature and to the circumstances in which it took place.
3. (a) "An omission" to be punishable under this section must amount to neglect which is wilful or culpable. If wilful, *i.e.*, deliberate it is clearly blameworthy. If it is not wilful, it may or may not be blameworthy, and the court must consider the whole circumstances of the case and, in particular, the responsibility of the accused. A high degree of care can rightly be demanded of a person who is in charge of a motor vehicle or public money or property, or who is handling firearms or explosives, where a slight degree of negligence may involve loss or danger to life; in such circumstances a small degree of negligence may be blameworthy. On the other hand, neglect which results from mere forgetfulness, error of judgment or inadvertence, in relation to a matter which does not rightly demand a very high degree of care, would not be judged blameworthy so as to justify conviction and punishment. The essential thing for the court to consider is whether in the whole circumstances of the case as they existed at the time of the offence the degree of neglect proved is such as, having regard to their military knowledge of the amount of care which ought to have been exercised, renders the neglect substantially blameworthy and deserving of punishment.
- (b) *Negligently*.—Negligence has been defined by judicial pronouncements as the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do and as "doing some act which a person of ordinary care and skill would not do under the circumstances".

4. The following are a few instances of offences not uncommonly charged under this section:—

Negligent performance of duties connected with money or stores resulting in a deficiency and loss.

Being in improper possession of public property or of property belonging to a comrade (where there is no evidence of actual theft).

Improperly using Government transport and petrol for private purposes.

Borrowing money from persons under his command, gambling, and other cases of disobedience of regulations which are not published as regimental orders [see note to AA. s. 42(e)].

Negligently wounding or injuring self or others.

Improperly using or obtaining railway warrants.

Sending an anonymous letter to his Commanding Officer.

Neglect of duty when a sentry, on guard, etc.

Causing a disturbance in the lines.

Stating a falsehood to a superior officer.

Using criminal force to a comrade.

5. AA recognises no such offence as “making a frivolous complaint”; but the repetition of baseless complaints may amount to an offence under this section; so too may a complaint so framed as to be offensive or indicative of insubordination, etc.

**64. Miscellaneous offences.**—Any person subject to this act who commits any of the following offences, that is to say,—

- (a) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority; or
- (b) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person; or
- (c) attempts to commit suicide, and in such attempt does any act towards the commission of such offence; or
- (d) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bazar, carrying a rifle, sword or other offensive weapon; or
- (e) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service; or
- (f) commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

#### NOTES

1. *Clause (a).*—The offence under this clause can only be committed by a person who is in command.

2. For definition of riot and trespass, see IPC. ss. 146 and 441 respectively.

3. *Clause (b).*—The offence under this clause, which is similar to offence under chapter XV of the IPC is based on the Fundamental Right to freedom of religion conferred by Art. 27 of the Constitution.

4. *Intentionally.*—A person is presumed to intend the natural and probable consequences, of his act and the court may infer intention from the circumstances. See note 4 to AA. s. 34.

5. *Clause (c).*—(a) This offence is the same as the civil offence under IPC. s. 309.



(b) A person should not be charged with attempted suicide unless the circumstances of the case make it clear that he seriously intended to take his life.

(c) Where the action falls short of a deliberate intent to end his life, the accused could be charged under AA. s. 46(c) or 63 (if appropriate); the charge alleging that the accused rendered himself temporarily unfit for duty by reason of his conduct.

(d) At the summary of evidence and the trial evidence must be given by a medical officer as to the probable effect of the action which the accused took and he should also express his opinion as to the state of mind of the accused at the time of the commission of the alleged offence.

6. *Clause (d).*—(a) This offence can only be committed by NCO or sepoy.

(b) *Camp.*—See note 13 to AA. s. 34.

‘Cantonment’ is not restricted to those stations which have been declared to be “cantonments” for the purposes of the Cantonments Act, 1924 (II of 1924). Troops are considered to be in a cantonment for the purposes of AA when they are quartered in any Station or locality as a permanent, or semi-permanent, arrangement.

(c) *Without proper authority.*—See note 3 (a) to AA. s. 49.

7. *Clause (e).*—(a) *Gratification.*—This term is not restricted to a pecuniary gratification or a gratification estimable in money. The offence is complete if the gratification is given with the intention indicated, and it is not necessary that the enrolment or other object should be actually procured. An attempt to obtain a gratification (*e.g.*, by asking for it) is punishable equally with the actual receipt of one. An attempt to give a gratification (*e.g.*, an offer of a bribe) is an abetment of the offence by way of instigation and is punishable under AA. s. 66 or 68 as the case may be.

(b) *Any other advantage or indulgence.*—Such advantage etc., must be *ejusdem generis*.

8. *Clause (f).*—(a) *Offence.*—For definition see AA. s. 3 (xvii). The word “offence” here means an offence which would be punishable, if committed in India as a civil offence.

(b) *See note 11 to AA. s. 42.* It is frequently of the highest importance to conciliate the inhabitants of the country where the troops happen to be, and to induce them to bring provisions and supplies. From this point of view an offence, which in other circumstances would be trivial, may require severe punishment, as for instance, if a trifling theft has the effect of disturbing the confidence of the inhabitants and endangering the supplies of the Army. A person should not be charged under this clause when the offence is committed in India. Elsewhere it is better that a charge should be preferred under AA. s. 69 and not under this clause. The charge must set out the specific acts of violence or the specific offence alleged to have been done or committed.

**65. Attempt.**—Any person subject to this Act who attempts to commit any of the offences specified in sections 34 to 64 inclusive and in such attempt does any act towards the commission of the offence shall, on conviction by court-martial, where no express provision is made by this Act for the punishment of such attempt, be liable,

if the offence attempted to be committed is punishable with death, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if the offence attempted to be committed is punishable with imprisonment, to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

#### NOTES

1. Attempts to commit the offences specified in AA. ss. 34 to 64 are, except where such attempts are specifically provided for (*e.g.*, an attempt to desert), triable under this section. Attempts to commit civil offences are not triable under this section but are triable under AA. s. 69 read with IPC. s. 511.

2. Does any act towards the commission of the offence: There is a difference between the preparation antecedent to an offence and the actual attempt. To constitute an attempt to commit an offence there must be an intent to commit the offence, a commencement of the commission and an act done towards the commission. An act is said to be done towards the commission of the offence when the offence remains incomplete only because something yet remained to be done, which the person intending to commit the offence is unable to do by reason of circumstances independent of his own volition. These words must not be construed to include all acts, however, remote, which tend towards the commission of the offence. The thing done may be too small or it may proceed too short a way towards the accomplishment of the offence for the law to notice it as an attempt. It must in every case be a question depending upon the circumstances

whether a particular act done (with the requisite intention) towards the commission of the offence is sufficiently proximate to its commission to constitute an attempt or is so remote as to merely constitute preparation for its commission.

3. A person charged before a court-martial with any offence under AA may be found guilty of the attempt to commit that offence if the evidence so warrants: AA. s. 139 (8).

**66. Abetment of offences that have been committed.**—Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive shall, on conviction by court-martial, if the act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

#### NOTES

1. For definition of 'abetment' see IPC. s. 107 (Part III).
2. Abetment of a civil offence is not triable under this section or AA. s. 67 or 68 but under AA. s. 69.
3. A person subject to AA who abets a person not subject to the said act e.g., civilian, airmen etc., in doing a thing which would have been an offence under AA had the person doing it been subject thereto is not punishable under AA. ss. 66 to 68. Such cases will, however, generally fall within the terms of AA. s. 69.
4. A person charged before a court-martial with any offence under AA may be convicted of having abetted the commission of that offence. AA. s. 139(8).

**67. Abetment of offences punishable with death and not committed.**—Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub-section (1) of section 38 shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

#### NOTES

1. See notes to AA. s. 66.
2. This section deals with punishment for abetment of offences punishable with death where the offence has not been committed in consequence of the abetment and no specific provision for such punishment has been prescribed by AA.

**68. Abetment of offences punishable with imprisonment and not committed.**—Any person subject to this Act who abets the commission of any of the offences specified in section 34 to 64 inclusive and punishable with imprisonment shall, on conviction by court-martial, if that offence is not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this act mentioned.

#### NOTES

1. See note to AA. s.66.
2. This section is similar to AA. s. 67; except that it deals with abetment of offences punishable with imprisonment.

**69. Civil offences.**—Subject to the provisions of section 70, any person subject to this Act who at any place in or beyond India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section, shall be liable to be tried by a court-martial and, on conviction, be punishable as follows, that is to say,—

- (a) if the offence is one which would be punishable under any law in force in India with death or with imprisonment for life<sup>1</sup>, he shall be liable to suffer any punishment, other than whipping, assigned for the offence by the aforesaid law and such less punishment as is in this Act mentioned;

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<sup>1</sup> See IPC s. 53A

- (b) in any other case, he shall be liable to suffer any punishment, other than whipping, assigned for the offence by the law in force in India, or imprisonment for a term which may extend to seven years, or such less punishment as is in this Act mentioned.

#### NOTES

1. (a) An offence under this section should not be dealt with summarily under AA. ss. 80, 83, 84 or 85.

(b) A SCM cannot try an offence punishable under this section unless the provisions of AA. s. 120(2) have been complied with.

(c) Before trial is ordered on any charge under this section, as a rule the advice of the Dy JAG of Command/DJAG Corps concerned should be obtained. Regs for the Army para 459.

2. 'Civil offence' means an offence triable by a criminal court [AA. s. 3(ii)]. For definition of 'criminal court' see AA. s. 3(viii). It therefore follows that a person subject to AA who while stationed in any country other than India commits an act or omission which is an offence under the civil law of that country but which if committed in India would not amount to a 'civil offence' cannot be charged under this section though a charge may properly be framed under AA. s. 63 if the facts so warrant.

3. 'Subject to the provisions of AA. s. 70'.—AA. s. 70 prohibits trial by court-martial of three civil offences viz.. murder, culpable homicide not amounting to murder of a person not subject to military, naval or air force law e.g.. a civilian or rape in relation to such a person, unless the said offence was committed:

- (a) While on active service (for definition see AA. ss. 3(i) and 9, or
- (b) at any place outside India, or
- (c) at a frontier post specified by the Central Government by notification in this behalf.

The test is where the offence was committed and not where the trial is held. If the offence was committed at a place and in the conditions which permit of the offence being tried by court-martial; the court-martial may be held anywhere (AA. s. 124) where courts-martial may be convened.

4. Certain Acts of Parliament require that, before proceedings can be instituted in the criminal courts, the consent of the appropriate Govt. must be obtained [e.g., under s. 13(3) of the Official Secrets Act, 1923]. It is not, however, necessary, before a person is charged with an offence under this section alleging that the civil offence is against such an Act, to obtain such a consent.

5. For adjustment of jurisdiction between a criminal court and a court-martial when both have jurisdiction in respect of the same civil offence, see AA. ss. 125 and 126 and notes thereto. Also see AR 197A and Regs for the Army para 418.

6. See AA. s. 139(6) and notes thereto, which enables a court-martial, when trying a person for a civil offence to find him not guilty of that offence but guilty of any other offence of which he might have been found guilty under the Cr. PC.

7. (a) For offences falling under clause (a), except only those offences for which an obligatory punishment is provided under the law in force in India (e.g., death or imprisonment for life for murder), a court-martial may award any of the following punishments:—

- (i) Any punishment, other than whipping, assigned to the offence under the law in force in India; and
- (ii) In addition to the above, one or more of the punishments specified in AA. s. 71.

(b) For offences falling under clause (b), courts-martial may award:

- (i) the punishment, other than whipping, assigned to the offence under the law in force in India, or
- (ii) imprisonment which may extend to seven years, or

- (iii) in addition to any of the above, one or more of the punishments specified in AA. s. 71.

(c) Fines are awardable (as penalties authorised under the law in force in India) under both clauses of this section.

8. Chapter VI deals generally with offences punishable by the ordinary civil law which are made offences against AA by this section.

**70. Civil offences not triable by court-martial.**—A person subject to this Act who commits an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a court-martial unless he commits any of the said offences—

- (a) while on active service, or
- (b) at any place outside India, or
- (c) at a frontier post specified by the Central Government by notification in this behalf. (Explanation)<sup>1</sup>.

**NOTE**

1. See note 3 to AA, s. 69.

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<sup>1</sup> Omitted by Act 13 of 1975

## CHAPTER VII

## PUNISHMENTS

**71. Punishment awardable by courts-martial.**—Punishment may be inflicted in respect of offences committed by person subject to this Act and convicted by court-martial, according to the scale following, that is to say,—

- (a) death;
- (b) (imprisonment for life)<sup>1</sup> ;
- (c) imprisonment, either rigorous or simple, for any period not exceeding fourteen years;
- (d) cashiering, in the case of officers;
- (e) dismissal from the service;
- (f) reduction to the ranks or to a lower rank or grade or place in the list of their rank, in the case of warrant officers; and reduction to the ranks or to a lower rank or grade, in the case of non-commissioned officers :

Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy;

- (g) forfeiture of seniority of rank, in the case of officers, junior commissioned officers, warrant officers and non-commissioned officers; and forfeiture of all or any part of their service for the purpose of promotion, in the case of any of them whose promotion depends upon length of service ;
- (h) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;
- (i) severe reprimand or reprimand, in the case of officers, junior commissioned officers, warrant officers and non-commissioned officers;
- (j) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active service ;
- (k) forfeiture in the case of a person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal;
- (l) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

## NOTES

1. See Regs for the Army para 468 as to the principles to be observed by a court-martial in awarding sentence. These should be treated as a guide only and it may be necessary to pass more severe sentence if, for example, the offence is committed on active service, or where attention has been called in local orders to the prevalence of the offence and such orders have been proved to the satisfaction of the court.

2. The punishments referred to in this section are the only punishments awardable by a court-martial on conviction for an offence specified in any of the AA. ss. 34 to 68.

In cases of charges under AA. s. 69, a court-martial can also award any punishment, other than whipping, assigned for the offence under any law in force in India. For instance, a fine is not specified as a punishment in this section but a court-martial exercising jurisdiction under AA. s. 69 can award a fine and such fine is recoverable under AA. ss. 90(f)/91(h) or 174, if the civil offence in question is punishable with a fine under the law in force in India.

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<sup>1</sup>See IPC s. 53A.

3. As to jurisdiction and powers of GCM, SGCM, DCM and SCM, see AA. ss. 118 to 120.
4. As to disposal of property produced before a court-martial or regarding which an offence has been committed, see AA. ss. 150 and 151.
5. AA. s. 73 specifies the particular instances in which more than one punishment may be awarded.
6. *Clause (a).*—(a) A sentence of death can only be passed by a GCM with the concurrence of at least two-thirds of the members or by a SGCM with the concurrence of all the members; see AA. s. 132(2) and (3). A certificate to the effect that the death sentence was passed with the concurrence of.... members/unanimously, as the case may be, should be endorsed in the proceedings.
  - (b) In awarding a sentence of death the court must add a direction that the accused shall suffer death by being hanged by the neck until he be dead; or by being shot to death; see AA. s. 166.
  - (c) A person who is sentenced by a court-martial to death continues to be subject to AA till the sentence is executed: see AA. s. 123(4).
  - (d) Apart from AA. s. 69, the offences where a sentence of death can be awarded are specified in AA. ss. 34, 37 and 38(1).
  - (e) An officer sentenced to death or imprisonment must first be sentenced to be cashiered. AA. s. 74.
  - (f) For forms of warrants, see Appx V to AR.
7. *Clause (b).*—(a) Imprisonment for life is a punishment which a GCM or SGCM can award only in cases of charges under AA. s. 69 where such a punishment is assigned for that offence under the law in force in India or where the offence is punishable with death as under AA. s. 34, 37 or 38(1) and the court considers that sentence to be too severe in the circumstances of the case.
 

Imprisonment for life cannot be awarded for any of the remaining offences as the maximum punishment laid down for such offences is imprisonment for fourteen years or cashiering/dismissal.

  - (b) For calculating fractions of terms of punishment imprisonment for life is to be reckoned as equivalent to imprisonment for twenty years (IPC.s. 57), though for other purposes it is treated as imprisonment for the whole of the remaining period of the convicted man's natural life. In practice, the sentence of imprisonment for life is treated as a sentence for a certain number of years only.
  - (c) In case of officers, a sentence of cashiering must precede sentence of imprisonment for life; see AA.s. 74.
  - (d) Though a WO or NCO is deemed to be reduced to the ranks if sentenced to imprisonment for life, imprisonment or dismissal from the service under AA.s. 77, it is desirable to specify the reduction in the sentence.
  - (e) As to the date from which a sentence of imprisonment for life is to be reckoned, see AA.s. 167.
  - (g) As to execution of sentences of imprisonment for life and forms of warrants see AA.ss. 168, 170 and 172 and notes thereto. Form A and Form F in Part II of Appx IV to the AR and Form J in Appx V to the said Rules.
  - (h) For suspension of a sentence of imprisonment for life or imprisonment see AA.ss. 182 to 190 and notes thereto.
8. *Clause (c).*—(a) Imprisonment is either (i) rigorous, that is, with hard labour; or (ii) simple. The terms "rigorous" and "simple" should invariably be used in sentences passed under AA. If a court inadvertently passes a sentence of "imprisonment" without specifying whether it is rigorous or simple, the sentence is treated as one of "simple imprisonment". Sentences of simple imprisonment are inexpedient and inconvenient of execution.
  - (b) A sentence of imprisonment, whether revised or not, and whether the accused is already undergoing sentence or not, commences on the day on which the original proceedings were signed by the presiding officer or in the case of a SCM, by the court (AA.s. 167). See AA sec 169 A also.
  - (c) An officer sentenced to death, imprisonment for life or imprisonment must first be sentenced to be cashiered. (AA.s. 74).
  - (d) As to the automatic reduction to the ranks as a result of the sentence, see note 7(d) above.



(e) As to execution of sentences of imprisonment see AA.ss. 169, 170 and 171. For forms of warrant see Forms B, C, F and G in Appx IV to AR. See AA sec 169 A also.

Advantage should be taken of AA. s. 169(3) to award short sentences of imprisonment, not exceeding three months, to be undergone in military custody to persons whom it is desired to retain in the service. See Regs Army para 494.

(f) For suspension of sentences see AA.ss. 182 to 190 and notes thereto.

(g) Sentences of imprisonment, unless for one or more years exactly, should, if for one month or upwards, be recorded in months. Sentences consisting partly of months and partly of days should be recorded in months and days. Also see Regs Army para 468 (e).

9. *Clause (d) and (e).*—(a) Cashiering is the more ignominious form of dismissal; and normally an officer who has been cashiered cannot hold an appointment under the Government.

(b) In case of an officer, a sentence of cashiering must precede the sentence of death, imprisonment for life or imprisonment: AA.s. 74.

(c) For the date on which sentences of cashiering and dismissal take effect, see AR 168.

(d) for effects of cashiering or dismissal on pension or gratuity, see pension Regs 16(a) and 113 for officers and PBOR, respectively.

(e) Regs Army para 703 (a) makes provision for the forfeiture of gallantry decorations, campaign and commemorative medals clasps in the event of a person subject to AA being cashiered or dismissed.

(f) Dismissal under this section is a punishment awardable by a court-martial whereas dismissal under AA.s. 19 is an administrative measure.

10. *Clause (f).*—(a) Service in the lower rank, grade or class will reckon from the date of signing the original sentence, whether the original sentence in question was a revised sentence or mitigated by the confirming officer from a more severe sentence.

(b) Although the definition of NCO includes an acting NCO, a court-martial does not deal with acting or lance rank; a sentence reducing a naik (acting Havildar) to naik or lance naik, or a lance naik to the ranks, is inoperative. See Regs Army para 131 for definition of ranks and appointments.

(c) Reduction of a WO or NCO under this section to the ranks or to a lower rank or grade is a punishment awardable by a court-martial whereas a similar reduction under AA.s. 20(4) is an administrative measure resorted to on grounds of inefficiency or unsuitability. See Regs Army paras 172 and 173.

(d) The term 'grade' means 'rank'.

11. *Clause (g).*—(a) For form of sentence see part I of Appendix III to AR.

A sentence of forfeiture of seniority may be combined with a sentence of forfeiture of service for the purpose of promotion.

(b) *Forfeiture of seniority of rank.*—The effect of a sentence of forfeiture of a seniority of rank is that the seniority of the person in his rank alone is affected, not the period of the service in the rank. For example, Capt 'A', who is substantive Capt having been commissioned on 1 Jan 69, is awarded by a GCM on 1 Jun 78 forfeiture of 2 years seniority of rank. The sentence specifically reading as—"to take rank and precedence as 'if his appointment as substantive Capt bore date the first day of Jan 1971'". 'As a result of this sentence Capt 'A' would be junior to all Captains commissioned before 1 Jan 71 in that rank.

(c) *Forfeiture of service for the purpose of promotion.*—This sentence can be awarded in respect of all or any part of his service. The forfeiture does not affect the seniority of the officer etc., in the rank he holds at the time the sentence is passed. The effect of this sentence would be that all future promotions depending upon length of service will be retarded by the period forfeited under this clause. This would not preclude a court-martial from awarding the punishment of forfeiture of seniority of rank in the form of sentencing an officer to take precedence in the rank held by him in his corps as if his name had appeared a specified number of places lower in the list of his corps, in cases where dates of appointment of a large number of officers are identical and the forfeiture of even one day's service for the purposes of promotion might in its effect constitute too severe a punishment for the offence which nevertheless would not be adequately met by a severe reprimand.

12. *Clause (h).*—(a) 'Prescribed' means prescribed by rules made under AA. No other 'purpose' has so far been 'prescribed' under this clause.

(b) As to forfeiture of service towards pension or gratuity on conviction for desertion or fraudulent enrolment, see Regs Pension, where the conditions under which service so forfeited is restored are also laid down.

13. *Clause (i): Severe reprimand or reprimand.*—(a) Although acting rank is not cognisable in the sentence of a court-martial, a sepoy holding any such rank, being a NCO [AA.s. 3 (XV)], may nevertheless be sentenced by a court-martial to be severely reprimanded or reprimanded.

(b) Severe reprimand constitutes a 'red ink' entry; see Regs Army para 387(b).

14. *Clause (j).*—(a) This punishment can only be awarded by a court-martial where an offence is committed on active service: for definition of 'active service', see AA.ss. 3 (i) and 9. It is immaterial where the trial takes place.

(b) This sentence may be awarded in addition to other punishments. Care must be taken in awarding a sentence of forfeiture of pay and allowances in days to ensure that the total period in days does not exceed three calendar months e.g., when February intervenes.

(c) The forfeiture commences from the date of award and applies to all pay and allowances but see AA.s. 94. Any other stoppages of pay and allowances which the offender may be under are suspended during the period of the forfeiture.

15. *Clause (k).*—As cashiering or dismissal takes effect from the date specified in AR 168, this punishment will hardly be effective unless action has already been taken under AA.s. 93 for withholding the pay and allowances of the accused in which case the pay and allowances so withheld will automatically be forfeited under AA.s. 91(b) read with P and A Regs if the accused was in custody; forfeiture under this clause will then cover only arrears of pay and allowances prior to the date the accused was placed in custody as well as any public money due to him.

16. *Clause (l).*—An award to compensate for loss or damage is termed 'stoppages'. Such an award can only be made if the particulars of the charge allege that the act or omission of the accused occasioned a loss or damage and, is proved on record [AR 30 (6)].

17. Irrespective of the currency in which the wording of a charge may assess the loss or damage, any stoppage that is imposed by a court-martial must be awarded in the Indian currency. The only exception to this rule is where the accused's rate of pay is expressed in any Regulations/Instructions in any other currency.

18. If a court wishes to award compensation to the injured party as well as to cause the offender to lose all arrears of pay and allowances, etc., it should sentence him to stoppages under this clause and to forfeiture of all arrears of pay and allowances, etc. under clause (k). The stoppages will first be satisfied from any pay and allowances or other public money due to him, and the remainder (if any) will be forfeited to the State under the sentence.

19. A court-martial acting under this clause will simply sentence the offender to stoppages to a certain extent. The recovery which is automatic will take place under the provisions of AA.s. 90 or 91, whichever is applicable, and the P & A Regulations. The officer enforcing the sentence will be guided by AA.ss. 94 and 95 i.e., he will (unless the offender is sentenced to dismissal or is an officer) stop half his pay and allowances in any one month and the whole of any gratuity or other public money (not pay and allowances) due to him, until the compensation awarded in the sentence is complete. No portion of the pay and allowances of a person sentenced to dismissal is protected and the whole of such a person's pay and allowances can, if necessary be withheld.

**72. Alternative punishments awardable by court-martial**—Subject to the provisions of this Act, a court-martial may, on convicting a person subject to this Act of the offences specified in sections 34 to 68 inclusive, award either the particular punishment with which the offence is stated in the said sections to be punishable, or, in lieu thereof, any one of the punishments lower in the scale set out in section 71, regard being had to the nature and degree of the offence.

#### NOTES

1. "Subject to the provisions of this Act"; AAs. 73 specifies the particular instances in which more than one punishment may be awarded.

2. [ ]<sup>1</sup>

3. The punishments awardable by a court-martial on conviction for a civil offence under AA.s. 69 are set out in that section.

<sup>1</sup> Omitted. See Act No. 37 of 1992.

**73. Combination of punishments.**—A sentence of a court-martial may award in addition to, or without any one other punishment the punishment specified in clause (d) or clause (e) of section 71 and any one or more of the punishments specified in clauses (f) to (l) of that section.

#### NOTES

1. The following combined sentences are legal :—
  - (i) Cashiering, imprisonment, stoppages and forfeiture of pay and allowances in the case of an officer.
  - (ii) Imprisonment, dismissal, reduction (WO and NCO), stoppages and forfeiture.
  - (iii) Dismissal, reduction (NCO) stoppages and forfeiture;
  - (iv) Forfeiture of seniority of rank, forfeiture of service for promotion (when applicable), severe reprimand, forfeitures and stoppages, in the case of an officer, JCOs, WO or NCO.
2. It should be noted that forfeiture of pay and allowances can only be awarded for an offence committed on active service. Further, a DCM cannot award a sentence of imprisonment to a WO (AA.s. 119).
3. The punishments specified in this section may be awarded for civil offences tried under AA.s. 69 either in lieu of, or in addition to, those assigned by the ordinary law to the offence of which the accused has been convicted. See note 7 to AA.s. 69.

**74. Cashiering of Officers.**—An officer shall be sentenced to be cashiered before he is awarded any of the punishments specified in clauses (a) to (c) of section 71.

#### NOTES

Care must be taken to comply with this provision. A sentence of death, imprisonment for life or imprisonment and cashiering is incorrect as the sentence of cashiering must precede the sentence of death, imprisonment for life or imprisonment. If such a punishment is awarded the confirming officer should vary it under AR 73. However, in the case of an officer, a sentence of dismissal and imprisonment is no sentence at all being unknown to law; such a sentence, if passed by a court-martial, should be sent back for revision.

**75.** [Omitted]<sup>1</sup>

**76.** [Omitted]<sup>1</sup>

**77. Result of certain punishments in the case of a warrant officer or non-commissioned officer.**—A warrant officer or a non-commissioned officer sentenced by a court-martial to (imprisonment for life)<sup>2</sup>, imprisonment, [ ]<sup>1</sup> or dismissal from the service, shall be deemed to be reduced to the ranks.

#### NOTES

1. Although under this section a WO or NCO holding substantive rank, when sentenced to imprisonment for life, imprisonment or dismissal, is, *ipso facto*, reduced to the ranks it is desirable to specify the reduction in the sentence. A court-martial cannot sentence a person holding an acting rank to reduction to the ranks; but an acting NCO, being a NCO in terms of AA.s. 3 (XV) loses his acting rank under this section upon being sentenced to any of the punishments therein mentioned. See notes 10(b) to AA.s. 71.
2. The remission of the punishment mentioned in this section would not of itself avoid the reduction to the ranks consequent on the sentence. If it is desired to avoid such reduction to the ranks the reduction must be remitted as well; see AA.s. 181.

**78. Retention in the ranks of a person convicted on active service.**—When on active service, any enrolled person has been sentenced by a court-martial to dismissal, or to (imprisonment for life)<sup>2</sup> or imprisonment whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks, and such service shall be reckoned as part of his term of (imprisonment for life)<sup>2</sup> or imprisonment, if any.

#### NOTES

1. *Any enrolled person.*—Means a person subject to AA under AA.s. 2(1) (b), JCOs and WOs though originally enrolled are not liable to be retained to serve in the ranks under this section.
2. 'Prescribed officer' : see AR 191.

<sup>1</sup>Omitted by Act No. 37 of 1992.

<sup>2</sup>See IPC s. 53A.

3. A person can only be retained to serve in the ranks under this section while he is on active service, and the order must be made before the sentence of dismissal has taken effect; see AR 168. The dismissal is not avoided but is merely suspended so long as the person is retained to serve in the ranks. If it is subsequently desired to retain the person in the service, the dismissal must be remitted.

**79. Punishments otherwise than by court-martial.**—Punishments may also be inflicted in respect of offences committed by persons subject to this Act without the intervention of a court-martial and in the manner stated in sections 80, 83, 84 and 85.

#### NOTES

The proceedings under AA.s. 80, 83, 84 and 85 are summary proceedings. The officer disposing of the case summarily under these sections is not a 'court' nor does the Indian Evidence Act, 1872 apply to such proceedings. Further, unlike a trial by court-martial, the accused has no right to be represented by counsel/defending officer or even assisted by the 'friend' of the accused.

**80. Punishments of persons other than officers, junior commissioned officers and warrant officers.**—Subject to the provisions of section 81, a commanding officer or such other officer as is, with the consent of the Central Government specified by the (Chief of the Army Staff)<sup>1</sup>, may, in the prescribed manner proceed against a person subject to this Act otherwise than as an officer, junior commissioned officer or warrant officer who is charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments, that is to say,—

- (a) imprisonment in military custody up to twenty-eight days;
- (b) detention up to twenty-eight days;
- (c) confinement to the lines up to twenty-eight days;
- (d) extra guards or duties;
- (e) deprivation of a position of the nature of an appointment or of corps or working pay, and in the case of non-commissioned officers, also deprivation of acting rank or reduction to a lower grade of pay;
- (f) forfeiture of good service and good conduct pay;
- (g) severe reprimand or reprimand;
- (h) fine up to fourteen days' pay in any one month;
- (i) penal deductions under clause (g) of section 91;
- (j) [ ]<sup>2</sup>

#### NOTES

1. "*Subject to the provisions of Section 81*".—AA.s. 81 imposes certain limitations or restrictions on the powers granted to the Commanding or other officer under this section.

2. For the definition of CO; see AA.s. 3 (v).

A JCO commanding a unit or detachment, not being an officer, within the meaning of AA.s. 3 (xviii), cannot award any of the punishments under this section.

3. In the prescribed manner—see 'offence report' in Part II of Appendix-III to AR.

For the duties of a CO as to investigation of a charge for an offence and disposal of the charge; see AA.s. 102 and ARs 22 to 24.

Every charge must be heard in the presence of the accused; Witnesses are not sworn or affirmed, but the accused must have full liberty to cross-examine, to call witnesses and to make any statement.

<sup>1</sup> Substituted by Act No. 19 of 1955.

<sup>2</sup> Omitted by Act No. 37 of 1992

A CO may dismiss the charge, and he should do so if, in his opinion, the evidence does not show that some offence under AA has been committed, or if, in his discretion, he thinks that the charge ought not to be proceeded with. See AR 22 (2).

4. (a) Where a person has been convicted or acquitted of an offence by a court-martial or by a criminal court or summarily dealt with or the charge has been dismissed he is not liable to be summarily punished or tried by court-martial for the same offence or for an offence which is substantially the same; AA.s. 121. If, for example, he has been acquitted or convicted of, or summarily punished for, absence without leave, and the absence amounted to desertion, he cannot afterwards be tried for desertion.

(b) A person convicted by a court-martial of an offence cannot afterwards be sentenced under this section by his CO to stoppages for damage caused by that offence.

(c) A person is also not liable to be tried for an offence which has been pardoned or condoned by competent military authority, or which was committed more than three years before the date of his trial unless the offence was mutiny, desertion or fraudulent enrolment; see AA.s. 122 and AR 53.

5. (a) '*To the extent prescribed*'.—A CO or other officer specified in this section, if below field rank, cannot award, imprisonment or detention for a period exceeding seven days unless empowered to do so by an officer having power not less than an officer commanding a division. AR 192.

(b) For officers specified by the Chief of the Army Staff, with the consent of the Central Government, under this section; see Regs Army para 443.

6. The following combined punishments under this section are legal;

(a) In the case of a NCO—

One or more of the punishments specified in clauses (d) to (i).

(b) In the case of a Sepoy—

(i) Imprisonment, detention and confinement to the lines if the total period does not exceed 42 days, but the confinement to the lines will take effect on the expiry of imprisonment and or detention; or

In addition to the punishments mentioned in clause (i) above, the CO may award one or more of the following punishments e.g., extra guard or duties, deprivation of corps or working pay, reduction to a lower class of pay, forfeiture of good service and good conduct pay, fine and stoppages.

7. A CO cannot increase a punishment after he has once made his award, which is considered complete when the person has quitted his presence. But a CO can at any time before the punishment has been completed, mitigate or remit such punishment. As to entry of his award, see Regs Army para 387 (b).

8. Awards by a CO which appear to be illegal, unjust or excessive can be reviewed by superior military authority as defined in clause (a) of AA.s. 88: see AA.s. 87 and Regs Army para 442 also.

9. *Clause (a).*—(a) Imprisonment may be rigorous or simple. See s. 3 (27) of the General Clauses Act, 1897. The term 'rigorous' or 'simple' should always be used in the award, see note 8 (a) to AA.s. 71.

(b) Imprisonment, detention or confinement to the lines will not be awarded to a person who is of the rank of NCO or was of such rank at the time of committing the offence for which he is punished: AA.s. 81 (4). The term 'Non-commissioned officer' as defined in AA.s. 3 (xv) includes an acting NCO.

(c) Imprisonment will be reserved for serious and repeated offences.

(d) Imprisonment or detention commences from the date of award and ends at sunset of the day the sentence expires.

(e) An award of imprisonment, rigorous or simple, carries with it a minimum of two hours of military instruction daily; Regs for the Army para 509(a).

(f) As to deduction from pay and allowances entailed by an award of imprisonment or for absence without leave, see AA.s. 91 (a) and P and A Regs (OR).

(g) Imprisonment, detention, confinement to the lines and extra guards or duties may be awarded separately or conjointly but the carrying out of imprisonment and detention will precede confinement to the lines and extra guards or duties: AA.s. 81(2).

(h) No award or awards including imprisonment, detention and confinement to the lines shall exceed in the aggregate forty-two days, AA.s. 81 (3). Also see AA.s. 81 (2) and note (g) above.

10. *Clause (b).*—For detention in military custody: See Regs for the Army para 510. Also see notes 9 (b), (d), (g) and (h) above.

11. *Clause (c).*—(a) Defaulter's will be required to answer to their names at uncertain hours throughout the day, and will be employed on working parties to the fullest practicable extent with a view to relieving well-conducted soldiers therefrom. Defaulters will attend parades, and take all duties in regular turn. When the working parties required are not sufficient to keep the defaulters fully employed, the CO may order them to attend extra drill, which will be limited to one hour a day, and will include some form of useful instructions. (See item I, column 4 of the Table appended to Regs for the Army para 443.)

(b) Confinement to the lines is not 'custody' for the purpose of AA.s. 51.

(c) See notes 9 (b), (g) and (h) above.

12. *Clause (d).*—(a) This punishment is awarded for minor offences on those duties.

(b) See note 9 (g) above.

13. *Clause (e).*—(a) For ranks and appointments; see Regs for the Army para 131.

(b) Lower grade of pay includes lower class of pay.

(c) The maximum period for which such forfeiture can be ordered has not been prescribed, but see P&A Regs (OR).

14. *Clause (f).*—The CO or other specified officer can forfeit at a time one rate of such pay : see P and A Regs (OR).

15. *Clause (g).*—(a) This punishment can be awarded only to a NCO or an acting NCO. AA.s. 81 (5). A lance naik is a NCO for the purpose of this clause.

(b) An award of severe reprimand constitutes a red ink entry; Regs for the Army para 387 (b).

16. *Clause (h).*—(a) This punishment may be awarded alone or in conjunction with any other punishment under this section.

(b) Recovery can be effected under AA.s. 91 (h).

17. *Clause (i).*—Under this clause the CO or specified officer is authorised to award stoppages to meet any expenses, loss, damage or destruction caused by the offender to the Central Government or to any building or property: but the deductions so ordered shall not exceed in any month one half of his pay and allowances for that month, AA.ss. 91 (g) and 94.

### **81. Limit of punishments under section 80.**—(1)—[Omitted]<sup>1</sup>

(2) In the case of an award of two or more of the punishments specified in clauses (a), (b), (c) and (d) of the said section, the punishment specified in clause (c) or clause (d) shall take effect only at the end of the punishment specified in clause (a) or clause (b).

(3) When two or more of the punishments specified in the said clauses (a), (b) and (c) are awarded to a person conjointly, or when already undergoing one or more of the said punishments, the whole extent of the punishments shall not exceed in the aggregate forty-two days.

(4) The punishments specified in clauses [(a), (b), and (c)]<sup>2</sup> of section 80 shall not be awarded to any person who is of the rank of non-commissioned officer or was, at the time of committing the offence for which he is punished, of such rank.

(5) The punishment specified in clause (g) of the said section shall not be awarded to any person below the rank of a non-commissioned officer.

<sup>1</sup> Omitted by Act No. 37 of 1992

<sup>2</sup> Substituted by Act No. 37 of 1992.



## NOTES

1. See notes 9 (b), (g) & (h), 15 (a) and 18 (c) to AA.s. 80.
2. For sub-sec (4) and (5) of this section, a lance naik shall be deemed to be a NCO.

**82. Punishments in addition to those specified in section 80.**—(The Chief of Army Staff)<sup>1</sup> may, with the consent of the Central Government, specify such other punishments as may be awarded under section 80 in addition to or without any of the punishments specified in the said section, and the extent to which such other punishments may be awarded.

## NOTES

1. This section empowers the Chief of the Army Staff to add, with the consent of the Central Government, to the punishments awardable under AA.s. 80 and to specify the extent of the punishments so added.
2. For other punishments (i.e., specified under this section) which may be awarded under AA.s. 80 see Regs for the Army para 443.

**83. Punishment of officers, junior commissioned officers and warrant officers by brigade commanders and others.**—An officer having power not less than a brigade, or an equivalent commander or such other officer as is, with the consent of the Central Government, specified by the Chief of Army Staff<sup>1</sup> may, in the prescribed manner, proceed against an officer below the rank of a field officer, a junior commissioned officer or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments, that is to say,—

- (a) severe reprimand or reprimand;
- (b) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

## NOTES

1. See generally notes to AR. 26.
- 2 This section and AA.s. 84 obviate the necessity for trying by court-martial certain officers. JCOs or WOs who commit some offence which is not of a serious nature but which cannot at the same time be overlooked.
- 3 An officiating brigade, sub area or equivalent commander, irrespective of his rank, can exercise the powers under this section.
- 4 As to the 'prescribed manner' see AR 26, Forms 1 and 2 in Part I of Appendix IV to AR and Regs for the Army para 444.
- 5 An abstract of evidence, referred to in AR 26, if adduced must not consist of statements made at an earlier court of inquiry.
6. (a) An officer of the rank of Major or above cannot be dealt with under this section.
- (b) For definition of 'field officer' see AR 2 (c).
7. The sentence of forfeiture of seniority or of service for the purpose of promotion cannot be awarded under this section.
8. Stoppages : see AA.ss. 90 (e) and 91 (e) and note 16 to AA.s. 71.
9. Awards under this section, AA.ss. 84 and 85, which appear to be illegal, unjust or excessive can be reviewed by the authorities specified in AA.s. 88(b) : see AA.s. 87 and Regs for the Army para 442.
10. For transmission of proceedings, see AA.s. 86.
11. For period of limitation for trial see AA.s. 122 and notes thereto.

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<sup>1</sup> Substituted by Act No. 19 of 1955.

**84. Punishment of officers, junior commissioned officers and warrant officers by area commanders and others.**—An officer having power not less than an area commander or an equivalent commander or an officer empowered to convene a general court-martial or such other officer as is, with the consent of the Central Government, specified by the Chief of the Army Staff<sup>1</sup> may, in the prescribed manner proceed against an officer below the rank of lieutenant colonel, a junior commissioned officer or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments, that is to say,—

- (a) forfeiture of seniority, or in the case of any of them whose promotion depends upon length of service, forfeiture of service for the purpose of promotion for a period not exceeding twelve months, but subject to the right of the accused previous to the award to elect to be tried by a court-martial;
- (b) severe reprimand or reprimand;
- (c) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

#### NOTES

1. See generally notes to AA.s. 83 and AR 26.
2. An officiating area or equivalent commander or other officer specified in this section, irrespective of his rank, can exercise the powers under this section.
3. As to the 'prescribed manner' see AR 26, Form 1 and 2 in Part I of Appendix IV to AR and Regs Army para 444.
4. Charges against an officer, who at the time of the commission of offence or disposal held the rank of Lt Col (actg or substantive) should not be dealt with summarily, even if he has ceased to hold that rank at the time the case has been referred to the superior authority by his CO. He should be brought to trial by a court-martial or dealt with administratively depending on the merits of the case.
5. Forfeiture of seniority of rank or service : see note 11 to AA.s. 71. If the authority dealing summarily with the case proposes to award this punishment he shall ask the accused "Do you elect to be tried by court-martial or will you accept my award?"
6. For period of limitation for trial see AA.s. 122 and notes thereto.

**85. Punishment of junior commissioned officers.**—A commanding officer or such other officer as is, with the consent of the Central Government specified by the Chief of the Army Staff<sup>1</sup> may, in the prescribed manner, proceed against a junior commissioned officer who is charged with an offence under this Act [and award one or more of the following punishments, that is to say,—

- (i) severe reprimand or reprimand;
- (ii) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good :

Provided that the punishment specified in clause (i) shall not be awarded if the commanding officer or such other officer is below the rank of Colonel ]<sup>2</sup>.

#### NOTES

1. A CO or any 'specified' officer can award stoppages and other punishments against a JCO who is charged with an offence.
2. Prescribed manner : see AR 26, forms 1 and 2 in Part I of Appendix IV to the AR and Regs Army para 444.
3. Awards under this section which appear to be illegal, unjust or excessive can be cancelled, varied or remitted by superior military authority specified in AA.s. 88(a) i.e., any officer superior in command to the CO.
4. For period of limitation for trial see AA.s. 122 and notes thereto.
5. Transmission of proceedings : see AA.s. 86.

**86. Transmission of proceedings.**—In every case in which punishment has been awarded under any of the sections 83, 84 and 85, certified true copies of the proceedings

<sup>1</sup> Substituted by Act No. 19 of 1955.

<sup>2</sup> Substituted by Act No. 37 of 1992

shall be forwarded, in the prescribed manner, by the officer awarding the punishment, to a superior military authority as defined in section 88.

#### NOTE

See notes to AR 26 and Appendix Q to Regs Army para 444.

**87. Review of Proceedings.**— If any punishment awarded under any of the sections 83, 84 and 85 appears to a superior military authority as defined in section 88 to be illegal, unjust or excessive, such authority may cancel, vary or remit the punishment and make such other direction as may be appropriate in the circumstances of the case.

#### NOTES

1. (a) A “punishment is wholly illegal” if (i) the finding of guilty cannot be upheld : or (ii) the only punishment awarded is of a kind which cannot be awarded for the offence charged (e.g., stoppage of pay and allowances for an offence which is not alleged to have occasioned any loss); or (iii) where the punishment awarded is of a kind which the authority dealing with the case is not authorized to award.

(b) Where the punishment is wholly illegal it must be cancelled and appropriate directions made by the superior military authority.

2. (a) A punishment is “excessive” when it is in excess of the punishment authorised by law for the offence i.e., where it is of a kind which the authority dealing with the case is authorised to award for the offence charged but is greater in amount than he is authorised to award e.g., if an authority under AA.s. 83, 84, 85 were to award stoppages greater than the amount of the loss proved to have been occasioned by the offence.

(b) In such cases the superior military authority specified in AA.s. 88 can vary the punishment by reducing the amount of punishment to an amount which is authorised by law.

3. Where the punishment though not in excess of the punishment authorised appears to be ‘unjust’ or severe, the superior military authority has the power to remit the whole or part of the punishment. If the whole of the punishment is remitted there will be nothing left except the finding which will stand good and the accused will suffer the forfeitures or penalties which are consequential on conviction.

4. ‘Make such other direction, as may be appropriate in the circumstances of the case’ : These words would enable the superior military authority to mitigate or commute the punishment where it is unjust or excessive.

5. Though this section does not specifically provide review of the punishments awarded under AA.s. 80, the same procedure should be followed in respect of those punishments. Also see Regs Army para 442.

6. In exercise of the powers vested under section 88(b) of the Army Act, 1950, the chief of the Army staff has specified the Officer Commanding the Army Corps as a superior military authority for the purpose of sections 86 and 87 of the Army Act, 1950.

**88. Superior Military Authority.**—For the purpose of sections 86 and 87, a “superior military authority” means—

(a) in the case of punishments awarded by a commanding officer, any officer superior in command to such commanding officer;

(b) in the case of punishments awarded by any other authority, the Central Government, the (Chief of Army Staff)<sup>1</sup> or other officer specified by the (Chief of the Army Staff)<sup>1</sup>.

#### NOTE

1. Clause (a).—In cases where a detachment etc., commander can exercise the power of a CO within the meaning of AA, the CO of the main unit can be the superior officer of the detachment etc., commander under this clause.

2. Clause (b).—Chief of the Army Staff has specified the Officer Commanding an Army Corps as superior military authority for the purposes of sections 86 and 87 of the Army Act, 1950

**89. Collective fines.**—(1) Whenever any weapon or part of a weapon forming part of the equipment of a half squadron, battery, company or other similar unit is lost or stolen, the officer commanding the army, army corps, division or independent brigade to which such units belongs may, after obtaining the report of a court of inquiry impose a collective fine upon the junior commissioned officers, warrant officers, non-commissioned officers and men of such unit, or upon so many of them as, in his judgement, should be held responsible for such loss or theft.

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<sup>1</sup>Substituted by Act No. 19 of 1955.

(2) Such fine shall be assessed as a percentage on the pay of the individuals on whom it falls.

#### NOTES

1. This section authorises imposition of a collective fine on a company or similar unit for the purpose of enforcing collective responsibility. Such a collective fine must be distinguished from a joint fine based on individual responsibility. The intention of the section is not to permit of the punishment by fine of persons against whom there is suspicion but insufficient proof to warrant their conviction by court-martial. This section is, in a sense, an exception to the general scheme of AA, under which individual responsibility is the basis for punishment or for penal deduction. The powers granted by this section are, therefore, of an administrative and not judicial character.

2. A collective fine cannot be imposed upon officers.

3. The imposition of a collective fine under this section upon persons of a unit is not a bar to trial by court-martial of any person of that unit, whose individual act or omission may have contributed to the loss.

4. Whenever a weapon or part of a weapon referred to in this section and AR 186 is lost or stolen, a court of inquiry is mandatory under AR 185.

5. The amount of the fine to be imposed is regulated by AR 186 and the fine must be assessed as a percentage on the pay of the individuals on whom it falls.

Fine cannot be imposed in respect of weapons or parts of weapons not enumerated in AR 186.

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## CHAPTER VIII

## PENAL DEDUCTIONS

**90. Deduction from pay and allowances of officers.**—The following penal deductions may be made from the pay and allowances of an officer, that is to say.—

- (a) all pay and allowances due to an officer for every day he absents himself without leave, unless a satisfactory explanation has been given to his commanding officer and has been approved by the Central Government;
- (b) all pay and allowances for every day while he is in custody or under suspension from duty on a charge for an offence for which he is afterwards convicted by a criminal court or a court-martial or by an officer exercising authority under section 83 or section 84;
- (c) any sum required to make good the pay of any person subject to this Act which he has unlawfully retained or unlawfully refused to pay;
- (d) any sum required to make good such compensation for any expenses, loss, damage or destruction occasioned by the commission of an offence as may be determined by the court-martial by whom he is convicted of such offence, or by an officer exercising authority under section 83 or section 84;
- (e) all pay and allowances ordered by a court martial [ ]<sup>1</sup> to be forfeited or stopped;
- (f) any sum required to pay a fine awarded by a criminal court or a court-martial exercising jurisdiction under section 69;
- (g) any sum required to make good any loss, damage, or destruction of public or regimental property which, after due investigation, appears to the Central Government to have been occasioned by the wrongful act or negligence on the part of the officer;
- (h) all pay and allowances forfeited by order of the Central Government if the officer is found by a court of inquiry constituted by the (Chief of the Army Staff)<sup>2</sup> in this behalf, to have deserted to the enemy, or while in enemy hands, to have served with, or under the orders of the enemy, or in any manner to have aided the enemy, or to have allowed himself to be taken prisoner by the enemy through want of due precaution or through disobedience of orders or wilful neglect of duty, or having been taken prisoner by the enemy, to have failed to rejoin his service when it was possible to do so;
- (i) any sum required by order of the Central Government, [or any prescribed officer]<sup>3</sup> to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

## NOTES

1. (a) AA.s. 25 enjoins that the pay of any person subject to AA due to him as such under any regulation for the time being in force shall be paid without any deduction other than the deductions authorised by or under this or any other Act.

The term 'pay' means the rate of pay with increases, if any, for length of service, to which a person subject to AA is entitled by reason of his rank, appointment, trade group or trade classification, and includes additional remuneration such as qualification pay, proficiency pay and various forms of additional pay which is admissible only on fulfillment of certain conditions. Regulations may provide for the withdrawal of such additional remuneration if the conditions governing them, are not fulfilled. All other emoluments are 'allowances'. Also See note 1 to AA.s. 25.

<sup>1</sup>Omitted by Act No. 37 of 1992.

<sup>2</sup>Substituted by Act No. 19 of 1955.

<sup>3</sup>Inserted by Act No. 37 of 1992.

(b) It is illegal to make deductions which are not authorised and the unlawful withholding of pay is an offence under AA. s. 61.

2. This section and AA. s. 91 enunciate the penal deductions that may be made from the pay and allowances of an officer and a person other than an officer respectively and by implication exclude other penal deductions but they do not prohibit deductions not penal e.g., in respect of rations, or stoppages to meet a public claim or regimental debt or claim etc., under AR 205.

3. Though this section and AA. s. 91 are permissive, some of the penal deductions authorised thereunder have been made mandatory by P & A Regs (Officers) and OR. Penal deductions under clauses (a), (d), (e) and (f) of this section have been made mandatory and those under clauses (b), (c), (g), (h) and (i) permissive; see para 528 of P & A Regs (Officers).

4. As to remission of penal deductions, see AA.s. 97 and AR 195.

5. *Clause (a).*—If pay has been discontinued under P & A Regs or has not been drawn during a period of absence without leave, such pay is liable to be forfeited under this clause on the issue of an order by the Central Govt. If pay has been drawn during such a period, the issue constitutes an over-issue and the amount is recoverable as a public claim under AR 205. It is unnecessary for an officer to be found guilty of absence by any tribunal before any deductions for the period of absence can be enforced under this clause.

6. *Clause (b).*—Pay and allowances are issuable to an officer though he is in custody or under suspension from duty on a charge for an offence unless such pay and allowances or any part thereof are directed to be withheld under AA. s. 93, in which case they can be forfeited on his subsequent conviction for that offence. Even though pay and allowances are not so withheld, their issue during such period may constitute an over-issue and the amount may be recovered as a public claim under AR 205.

7. 'Custody' includes custody by the civil authorities.

8. *Suspension from duty.*—See Regs for the Army para 349. Valid deductions under this clause can only be made if the officer is subsequently convicted of the offence for which he was suspended or kept in custody.

9. *Clause (c).*—It is an offence under AA. s. 61 to detain pay unlawfully, etc., but it would not appear necessary for an officer to be convicted of an offence under that section before a deduction may be made under this clause.

10. *Clause (d).*—'Occasioned by'. In order to put an officer under stoppages by way of penal deductions, under either this clause or clause (g), it is not sufficient to show merely that the loss, etc., was facilitated or made possible by his offence, act, or neglect. It is necessary to show that the loss etc., was "occasioned by" in the sense of being the natural and reasonable consequence of the particular offence of which he is convicted. In the case, however, of the continuing wrongful act of improperly using Govt. property, e.g., a motor vehicle, any loss or damage happening to such property during the continuance of such user may be held to be occasioned thereby. Where the loss etc., was merely facilitated or made possible by the offence, it is possible to effect its recovery as a public etc., claim under AR 205 where appropriate.

11. The terms 'expenses' and 'losses' etc., in this clause are not limited to public and regimental funds and property but would also extend to, e.g., loss of wages and doctor's expenses incurred by an individual (servicemen or a civilian), as the direct result of the offence of which the delinquent is convicted. But occasion will rarely arise when it is advisable for a military tribunal to exercise its power of awarding a penal deduction to compensate a civilian, who has always his proper legal remedy of bringing a civil action for recovery of damages. Stoppages, however, should be awarded where a charge of theft of or damage to the property of a civilian is dealt with by court-martial or summarily.

A person is not liable for the ordinary expenses of his prosecution, capture or conveyance or indirect expenses of a similar kind. Nor would he be liable under this clause for damage to a policeman's clothes, because the policeman fell down and damaged them while in pursuit of the person endeavouring to escape. Where a person refuses to march being able to do so, and a taxi has to be hired for his conveyance, he may be held liable for the expense thus incurred by his contumacy; but he would not be liable if intoxicated and incapable of walking.

The principle is that stoppages are intended, not for punishment, but to compensate for the loss etc., sustained.

12. Where an officer has been convicted for an offence by a court-martial which did not award any stoppages, no penal deductions can subsequently be ordered under this clause administratively for compensation for damage caused through that offence.



13. As regards averment in the particulars of the charge of the amount of the loss etc., see AR 30 (6).

14. *Clause (e)*.—A court-martial can award both forfeiture of pay and allowances or arrears thereof and stoppages under clauses (j) , (k) and (l) of AA. S. 71 respectively.

15. *Clause (f)*.—Fine is not one of the punishments specified in AA.s. 71 and is only awardable by a court-martial when exercising jurisdiction under AA.s. 69.

16. When the fine awarded by court-martial cannot be recovered wholly by deductions from the pay and allowances of an officer, action may also be taken for its recovery under AA.s. 174.

17. *Clause (g)*.—‘Public property’ in this clause means not only property of the Govt. but also any property belonging to the community at large as distinct from that which is private property. Captured enemy property becomes public property.

18. The words ‘of public or regimental property’ qualify ‘loss’ and ‘damage’ as well as destruction. Furniture etc., hired by the military authorities for military use may be treated as “public” or “regimental” property.

19. It must be shown to the satisfaction of the Central Govt. that there has been a loss etc., occasioned by (in the sense referred to in note 10 above) some wrongful act or negligence on the part of the officer; and as a general rule an officer is first afforded an opportunity of advancing any reasons why a deduction should not be made from his pay and allowances.

The Central Government can legally impose a penal deduction on an officer under this clause notwithstanding that he has been previously dealt with under AA. s. 83 or 84 or by a court-martial for the wrongful act or neglect but they may not increase a penal deduction awarded by court-martial or other authority, or order such deduction where the loss etc., was averted in the particulars but the court-martial or other authority did not award any stoppages. A mere invitation to an officer to make a payment towards any loss or damage occasioned by his wrongful act or neglect however, does not bar the Central Govt. from making an order under this clause.

20. Negligence has the same meaning as ‘omission’ or ‘neglect’ in AA.s. 63, see notes thereto. Also see Regs Army para 435.

21. *Clause (h)*.—(a) When there is reason to believe that an officer has been taken prisoner by his own voluntary action or wilful neglect of duty or that he has served with or under or has aided the enemy, etc., a provisional court of inquiry will be assembled at the earliest moment to investigate the circumstances: See Regs Army para 522. The COAS or any officer authorised by him may then under AA.s. 96 order the pay and allowances of such person to be withheld pending the result of such inquiry.

A court of inquiry respecting a prisoner of war still absent and not known to have died in captivity will be provisional, to be followed later by another court of inquiry when the individual returns to service or is recovered. If the officer’s conduct is found by the court of inquiry (provisional or otherwise) to be blameworthy, the Central Govt. may, on the basis of such finding, order forfeiture of the pay and allowances of the officer. An officer, unlike a JCO, WO or OR, does not automatically forfeit his pay and allowances while a prisoner of war.

(b) When a court of inquiry is assembled on a prisoner of war, evidence shall be recorded on oath or affirmation, AR 181 (a). Also see AR 178.

(c) As to remission of penal deductions; see AA.s. 97 and AR 195 (a).

(d) As to provision for dependents of prisoners of war from remitted deductions or from his pay and allowances, see AA.s. 98 and 99 and AR 196.

(e) For the duration for which a person is deemed to be a prisoner of war; see AA.s. 100.

22. *Clause (i)*.—(a) This clause, like clause (i) of AAs. 91 was enacted mainly in order to prevent any financial hardship being caused to the wife or children by the provisions of AAs. 28 under which the pay and allowances of a person subject to AA cannot be attached in satisfaction of any decree of a civil court. In other words, if in a suit for maintenance or payment of alimony a civil court grants a decree in favour of the wife or children, the amount decreed can be deducted from the pay and allowances of a person and paid to the wife or children under this clause. Such being the intention, deductions should not, as a rule, be ordered under this clause or clause (i) of AAs. 91 except to give effect to a decree for maintenance granted by a civil court.

(b) See notes to AAs. 28

**91. Deduction from pay and allowances of persons other than officers.**—Subject to the provisions of section 94 the following penal deductions may be made from the pay and allowances of a person subject to this Act other than an officer, that is to say,—

- (a) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of (imprisonment for life)<sup>1</sup> or imprisonment awarded by a criminal court, a court-martial or an officer exercising authority under section 80, [ ]<sup>2</sup>;
- (b) all pay and allowances for every day while he is in custody on a charge for an offence of which he is afterwards convicted by a criminal court or a court-martial, or on a charge of absence without leave for which he is afterwards awarded imprisonment [ ]<sup>2</sup> by an officer exercising authority under section 80;
- (c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by an offence under this Act committed by him;
- (d) for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudence, such sum as may be specified by order of the Central Government or such officer as may be specified by that Government;
- (e) all pay and allowances ordered by a court-martial or by an officer exercising authority under any of the sections 80, 83, 84 and 85, to be forfeited or stopped;
- (f) all pay and allowances for every day between his being recovered from the enemy and his dismissal from the service in consequence of his conduct when being taken prisoner by, or while in the hands of, the enemy;
- (g) any sum required to make good such compensation for any expenses, loss, damage or destruction caused by him to the Central Government or to any building or property as may be awarded by his commanding officer;
- (h) any sum required to pay a fine awarded by a criminal court, a court-martial exercising jurisdiction under section 69, or an officer exercising authority under any of the sections 80 and 89.
- (I) Any sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

#### NOTES

1. See notes 1 and 2 AA.s. 90.

2. Penal deductions under clauses (a), (b), (c) and (f) of this section have been made mandatory see Rule 51 of P & A Regs (OR). In cases falling under clauses (a), (b) and (c) the pay and allowances are to

<sup>1</sup> See IPC. S. 53 A

<sup>2</sup> Omitted by Act No. 37 of 1992

be forfeited automatically and no discretion is given to the CO to decide whether or not to enforce wholly or partially the forfeiture, but as to remission of which deductions; see AA.s. 97 and AR 195.

3. *Clause (a).*—It is unnecessary for a JCO, WO or OR to be found guilty of absence by a court-martial or by his CO before a forfeiture of pay and allowances for the period of absence can be enforced under this clause.

4. A sepoy who has been sentenced by his CO to undergo detention or confinement to the lines under AA. s. 80 does not suffer deductions under this clause.

5. A JCO, WO or OR automatically forfeits his pay and allowances while a prisoner of war and such pay and allowances cannot as a rule be restored to him unless a court of inquiry assembled to inquire into his conduct finds that he was not taken prisoner through neglect or misconduct on his part or that he was otherwise blameless and the authority prescribed in AR 195(c) remits the forfeiture see AA. ss. 98 to 100, ARs 178, 181 and 196 and Regs Army para 522.

6. AA.s. 92 prescribes how days of absence etc., are to be calculated for the purposes of this clause and clause (b).

For instance, if a person absented himself from 9 P.M. on 1st Jun 78 and returned at 2.45 A.M. on 2nd Jun 78, he would forfeit no pay as his absence did not amount to six hours or upwards. If he was bound to go on guard or perform some other military duty and in consequence of his absence some other person had to go on guard or perform that duty, then he would forfeit one day's pay.

Again, if a person absents himself at 10 P.M., on the 1st Jun 78 and remains absent until 4 A.M., on the 2nd Jun 78, he would forfeit one day's pay, and if he remained absent until 2 A.M., on the 9th Jun 78, he would forfeit nine day's pay for in the latter case he would be absent for over twelve consecutive hours and the period of absence on the 1st and 9th Jun would each reckon as absence for one whole day.

7. When the sentence of imprisonment for life or imprisonment is suspended by competent authority under AA.s. 182, no forfeiture under this clause can take place for the period it is so suspended.

8. *Clause (b)*—See note 6 to AA.s. 90. Effect cannot be given to this provision unless the pay and allowances of a person in custody on a charge for an offence have been ordered to be withheld under AA.s. 93. Once they have been so withheld, the deductions are carried out automatically on conviction for that offence. If pay and allowances are not so withheld, their issue during such period constitutes an over-issue and the amount is recoverable as a public claim under AR 205. JCOs & NCOs under "close arrest" but not in confinement will incur no forfeiture of pay and allowances. For persons below that rank "close arrest" is the same thing as "confinement" and they will forfeit pay and allowances for every day of "close arrest". See note under Rule 51 (f) of P&A Regs (OR). "Custody" includes custody by the civil authorities.

9. NCO or sepoy who has been sentenced to any punishment other than imprisonment or field punishment under AA.s. 80 for the offence of absence without leave or a sepoy who is awarded imprisonment or field punishment under AA.s. 80 for an offence other than that of absence without leave does not forfeit his pay and allowances while in custody under this clause.

10. Upon a charge for desertion or absence without leave, a finding that the accused did the act charged but was insane at the time when he did the same, does not amount to a conviction, as it negatives "intention", and no forfeiture of pay and allowances results. See notes to AA.s. 145.

11. *Clause (c).*—The deduction under this clause is only authorised where the sickness is caused by an offence of which a person has been found guilty. It, therefore, does not extend to sickness caused by immorality or intemperance, when there is no conviction (either by a court-martial or the officer disposing of the case summarily) for an offence by which the sickness was caused. The medical officer must attend the investigation of the offence, whether before the court-martial or the officer disposing of the case summarily, and give evidence in substantiation of the facts contained in his certificate. Also see Regs Army para 1228.

12. *Clause (d).*—See Regs Army para 1228. The amount to be deducted is specified in P and A Regs (OR).

13. *Clause (e).*—Forfeiture of Pay and allowances or of arrears of pay and any public money due at the time of dismissal can only be awarded by a court-martial under clauses (j) and (k) of AA.s. 71 respectively. Such punishments cannot be awarded under AA.s. 80, 83, 84 or 85. A CO or specified officer can, however, award deprivation of corps or working pay, forfeiture of good service and good conduct pay or a fine under AA.s. 80.

14. (a) Stoppages or compensation cannot be awarded by a court-martial unless the grounds for awarding it are stated in the particulars of the charge and the loss etc., proved in evidence: see AR 30(6) and notes thereto. Also see note 5 to AA.s. 54, note 16 to AA.s. 71 and 13 of AA.s. 90.

(b) A deduction cannot be effected in anticipation of stoppages.

15. As to the limit of deductions: see AA.s. 94.

16. *Clause (f).*—A person subject to AA other than an officer forfeits his pay and allowances while a prisoner of war under clause (a) read with Rule 51 (c) P and A Regs (OR). See note 5 above. This clause authorise forfeiture of pay and allowances due to such person between the date of his being recovered from the enemy and the date of his dismissal from the service if the court of inquiry assembled under AA.s. 96 and Regs Army para 522 to inquire into his conduct finds that he was taken prisoner through neglect or misconduct on his part. Also see AA.s. 100.

17. For definition of enemy; see AA.s. 3 (x).

18. *Clause (g).*—For the meaning of words “expenses” and “losses” etc., see note 11 to AA.s. 90.

19. *Caused by.*—These words have the same meaning as the expression “occasioned by”. See note 10 to AA.s. 90.

These words have also been held to include loss of wages and doctor’s fee when a person’s negligence has occasioned personal injury to a third person.

20. ‘Any Building or property’ : The building or property need not be public building or property; the words include the buildings or property of persons subject to AA or civilians, whether there is any claim against the public or not. Thus, a CO may order a person to pay damages for a broken window, or such other minor damage done by him. A case of serious damage is, of course, not one which a CO should dispose of summarily.

21. Where a person has been convicted by a court-martial for an offence, his CO cannot subsequently award compensation for damage caused through that offence. The penal deductions under this clause are purely executory following CO’s award under AA. s. 80(i).

22. A JCO may be awarded stoppages by his CO under this clause. See AA.s. 85.

23. As to the limit of deductions; see AA.s. 94.

24. *Clause (h).*—See AA.s. 80 (b) The deductions permissible on account of fine under this clause cannot, except where the accused is sentenced to dismissal, exceed in any one month one half of his pay and allowances for that month AA.s. 94.

25. In addition to deduction under this clause, a fine awarded by a court-martial can also be recovered under the provisions of AA.s. 174.

26. *Clause (i).*— See note 22 to AA.s. 90, which applies *mutatis mutandis* to this clause.

27. As to extent of deductions, see AA.s. 94.

**92. Computation of time of absence or custody.**—For the purposes of clauses (a) and (b) of section 91,—

- (a) no person shall be treated as absent or in custody for a day unless the absence or custody has lasted, whether wholly in one day, or partly in one day and partly in another, for six consecutive hours or upwards;
- (b) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person;
- (c) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody;

- (d) a period of absence or imprisonment, which commences before, and ends after, midnight may be reckoned as a day.

## NOTES

1. This section explains how a 'day' of absence or custody referred to in clauses (a) and (b) of AA.s. 91 is to be computed.

2. (a) This section prescribes six hours as the minimum period of absence that will count as a day of absence unless two conditions are fulfilled, first, that the absentee was prevented by his absence from fulfilling a military duty, and second, that the duty was thrown upon some other person. Six clear hours must, therefore, elapse, and they must be reckoned consecutively.

(b) If the absence or custody amounts to six hours but not to twenty four hours one day's pay is forfeited unless the absence exceeds twelve consecutive hours and falls partly on one natural day (reckoned from midnight to midnight) and partly on another, in which case such absence or custody is reckoned for the whole of each natural day during any portion of which the person was absent or in custody.

(c) Also see note 6 to AA.s. 91.

**93. Pay and allowances during trial.**—In the case of any person subject to this Act who is in custody or under suspension from duty on a charge for an offence, the prescribed officer may direct that the whole or any part of the pay and allowance of such person shall be withheld, pending the result of his trial on the charge against him, in order to give effect to the provisions of clause (b) of sections 90 and 91.

## NOTES

1. Pay and allowances of a person are payable to him even though he is in custody or under suspension from duty on a charge unless the said pay and allowances, or any part thereof are withheld by the prescribed authority under this section pending the result of his trial on that charge; unless they are so withheld, the provisions of AA.s. 90 (b) and 91 (b) will remain ineffectual, but for the recovery of the amount as a public claim under AR 205, see notes 6 and 8 to AA.ss. 90 and 91 respectively.

2. The prescribed officer is, in the case of an officer, COAS, and in the case of a person other than an officer, the officer empowered to convene a court-martial for his trial. See AR 194.

**94. Limit of certain deductions.**—The total deductions from the pay and allowances of a person made under clauses (e), (g) to (i) of section 91 shall not, except where he is sentenced to dismissal, exceed in any one month one-half of his pay and allowances for that month.

## NOTES

From this section it appears that the intention is to leave a certain minimum proportion of his monthly emoluments to a person, other than an officer, for his subsistence. The restriction imposed, however does not apply—

- (a) to deductions under AA.s. 90 from the pay and allowances of an officer; or
- (b) to deductions under clauses (a), (b), (c), (d) and (f) of AA.s. 91; or
- (c) where the offender has been sentenced to dismissal.

**95. Deduction from public money due to a person.**—Any sum authorised by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money due to him other than a pension.

## NOTES

1. 'Any public money due to him other than a pension'—

- (a) This will allow the amount to be deducted from a gratuity or other sums earned by but not paid to a person subject to AA. It would not include money lodged in a fund of whatever description, nor ration or lodging etc., allowance.

- (b) A pension is excluded because being granted as an act or grace it is non-justifiable and the Government can take away or modify its grant [S. 4 of Pension Act, 1871 (XXIII of 1871)]. Further, a pensioner not being subject to AA is outside the scope thereof.

2. “Without prejudice to any other mode of recovering the same”—for instance, though a fine awarded by a court-martial exercising jurisdiction under AA.s. 69 is recoverable under clause (f) of AA.s. 90 or clause (h) of AA.s. 91, it can also be recovered under the provisions of AA.s. 174.

**96. Pay and allowances of prisoner of war during inquiry into his conduct.**—Where the conduct of any person subject to this Act when being taken prisoner by, or while in the hands of, the enemy, is to be inquired into under this Act or any other law, the (Chief of the Army Staff)<sup>1</sup> or any officer authorised by him may order that the whole or any part of the pay and allowances of such person shall be withheld pending the result of such inquiry.

#### NOTES

A JCO, WO or OR automatically forfeits his pay and allowances for the period he is a prisoner of war unless a court of inquiry assembled under Regs for the Army para 524 finds that he was not taken prisoner through neglect or misconduct on his part and the forfeiture has been remitted by the competent military authority specified in AR 195(3). In the case of a person other than an officer, therefore, the pay and allowances which may be withheld under this section will relate to the period after he returns or is apprehended. An officer, however does not automatically forfeit his pay and allowances while a prisoner of war. This section, therefore, provides that the pay and allowances of an officer may be withheld by the COAS or other officer authorised by him, pending the result of an inquiry into the officer's conduct; if the court of inquiry finds him to be blameworthy, his pay and allowances can then be forfeited by the Central Government. In other words, this section was enacted to give effect to the provisions of clause (h) of AA.s. 90 and clause (f) of AA.s. 91 and thus supplements those clauses.

**97. Remission of Deductions.**—Any deduction from pay and allowances authorised by this Act may be remitted in such manner and to such extent, and by such authority, as may from time to time be prescribed.

#### NOTES

1. “Prescribed”.—See AR 195. The most common case is that of a person absent without leave for a period not exceeding five days. In such a case, unless the person is convicted by a court-martial, his CO may remit the forfeiture of pay and allowances which his absence entails see AA.s. 91(a).

2. **And to such extent.**—The remission may be partial, but there is nothing to prevent a further remission made subsequently.

**98. Provision for dependents of prisoner of war from remitted deductions.**—In the case of all persons subject to this Act being prisoners of war, whose pay and allowances have been forfeited under clause (h) of section 90 or clause (a) of section 91, but in respect of whom a remission has been made under section 97, it shall be lawful for proper provision to be made by the prescribed authorities out of such pay and allowances for any dependents of such persons, and any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances.

#### NOTES

1. ‘Prescribed authorities’—See AR 196.

2. If the officer who assembles the court is not one of the prescribed authorities, he should forward the proceedings with his recommendation, to one of those authorities. A court of inquiry on a prisoner of war who is still absent may be assembled in order to assist the authorities prescribed in ARs 195 and 196, in determining respectively whether remission of forfeiture of pay and allowances shall be ordered and if so what provision under this section, shall be made for the dependents of such prisoners of war. A second court of inquiry must be assembled as soon as possible after the return of the prisoner of war. Regs for the Army para 524 (g).

**99. Provision for dependants of prisoner of war from his pay and allowances.**—It shall be lawful for proper provision to be made by the prescribed authorities for any dependants of any person subject to this Act who is a prisoner of war or is missing, out of his pay and allowances.

<sup>1</sup> Substituted by Act No. 19 of 1955.



## NOTES

1. This section applies where the pay and allowances of a person who is a prisoner of war or is missing have not been forfeited e.g., in the case of a person, other than an officer, who is missing or in the case of an officer who is a prisoner of war or is missing and in whose case a court of inquiry under the Regs Army has not been held or a court of inquiry has been held but the court found the officer blameless.

2. For '*prescribed authorities*'—See AR 196.

3. Under this section, unlike, AA.s. 98, provision can be made for a person's dependents even when such person is found missing.

**100. Period during which a person is deemed to be a prisoner of war.**—For the purposes of sections 98 and 99, a person shall be deemed to continue to be a prisoner of war until the conclusion of any inquiry into his conduct such as is referred to in section 96, and if he is cashiered or dismissed from the service in consequence of such conduct, until the date of such cashiering or dismissal.

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## CHAPTER IX

## ARREST AND PROCEEDINGS BEFORE TRIAL

**101. Custody of offenders.**—(1) Any person subject to this Act who is charged with an offence may be taken into military custody.

(2) Any such person may be ordered into military custody by any superior officer.

(3) An officer may order into military custody any officer, though he may be of a higher rank engaged in a quarrel, affray or disorder.

## NOTES

1. As to arrest and investigation of charges see ARs 22 to 27 and notes thereto and Regs for the Army paras 391 to 397, 401 and 402.

2. *Sub-sec. (1).*—Charged with an offence: The charge referred to here is not the formal written charge (AR 28) preferred by the CO when it is decided to send the case for trial but a complaint or accusation that an offence has been committed and which gives rise to the preliminary investigation.

3. *Military custody.*—See AA.s. 3(xiii).

This expression is here restricted to the military custody of persons when charged with offences and does not apply to persons in military custody when undergoing sentences.

4. *Sub-sec (2).*—Superior officer; see AA.s. 3 (xxiii).

5. *Sub-sec (3).*—Officer—see AAs. 3(xviii).

6. As to offences in relation to this sub-sec. see AA.s. 42(a).

**102. Duty of commanding officer in regard to detention.**—(1) It shall be the duty of every commanding officer to take care that a person under his command when charged with an offence is not detained in custody for more than forty-eight hours after the committal of such person into custody is reported to him without the charge being investigated, unless investigation within that period seems to him to be impracticable having regard to the public service.

(2) The case of every person being detained in custody beyond a period of forty-eight hours, and the reason thereof shall be reported by the commanding officer to the general or other officer to whom application would be made to convene a general or district court-martial for the trial of the person charged.

(3) In reckoning the period of forty-eight hours specified in sub-section (1), Sundays and other public holidays shall be excluded.

(4) Subject to the provisions of this Act, the Central Government may make rules providing for the manner in which and the period for which any person subject to this Act may be taken into and detained in military custody, pending the trial by any competent authority for any offence committed by him.

## NOTES

1. *Sub-sec. (1).*—For definition of CO. see AA.s. 3(v). A CO who unnecessarily detains a person in arrest or confinement renders himself liable to a charge under AAs. 50(a).

2. This sub-sec which applies in the case of officers as well as JCOs, WOs and OR, means that the investigation must be commenced within the time specified, though it may be impossible to complete it within that time. As to exclusion of Sunday and public holidays, see sub-sec. (3).

3. *Sub-sec. (2).*—The report should be made by letter and should refer specifically to the case, and state the reasons justifying the detention of the accused in custody without investigation. The absence of an important witness would justify a remand or the accused might be ordered to return to his duty with a specific intimation that his case will be investigated as soon as the absent witness is available.

4. *Sub-sec. (3).*—Sundays and other public holidays are excluded when computing the period of forty-eight hours referred to in sub-sec. (1) though they are not so excluded for any other purpose e.g., time reckoned for the purposes of punishment or of any deduction of pay.

5. *Sub-sec. (4).*—See AR 27.

**103. Interval between committal and court-martial.**—In every case where any such person as is mentioned in section 101 and is not on active service remains in such custody for a longer period than eight days, without a court-martial for his trial being ordered to assemble, a special report giving reasons for the delay shall be made by his commanding officer in the manner prescribed, and a similar report shall be forwarded at intervals of every eight days until a court-martial is assembled or such person is released from custody.

#### NOTES

1. The intention of this section is to bring the accused to trial as soon as possible and to avoid delays in disposing of cases under AA.

2. AA does not require these reports to be rendered where the accused is on active service.

3. The section applies whether the accused is in open or close arrest.

4. *Special report.*—For form see Appendix III (Part IV) to AR.

The object of this section is that all intervals beyond eight days must be justified by submission of special reports until a court-martial has been ordered to assemble or the person concerned released. AR 27(3) has been framed under AA.s. 102(4), in order to render unlawful any detention beyond 2/3 months without a court-martial having been ordered to assemble unless the sanction of the COAS or approval of the Central Govt. as the case may be has been obtained.

**104. Arrest by civil authorities.**—Whenever any person subject to this Act who is accused of any offence under this Act, is within the jurisdiction of any magistrate or police officer, such magistrate, or police officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his commanding officer.

#### NOTES

This section enjoins the civil authorities e.g., a magistrate or a police officer to assist in the arrest and delivery to military custody of a person accused of an offence under AA if within their jurisdiction, upon a requisition signed by his CO.

**105. Capture of deserters.**—(1) Whenever any person subject to this Act deserts, the commanding officer of the corps, department or detachment to which he belongs, shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, into military custody.

(2) Any police officer may arrest without warrant any person reasonably believed to be subject to this Act, and to be a deserter or to be travelling without authority, and shall bring him without delay before the nearest magistrate, to be dealt with according to law.

#### NOTES

(1) The section lays down the procedure to be followed for apprehending deserters or suspected deserters and for dealing with persons so arrested. For detailed instructions as to action to be taken by the CO, see Regs for the Army para. 377.

2. This section is a special application of the powers granted to the civil authorities under AAs. 104.

3. The 'corps' referred to in this section is the corps as defined in AR 187(3).

Department.—See AA.s. 3(ix).

*Detachment.*—Recruiting parties, including enrolled recruits accompanying them under the orders of a RO or ARO, enrolled personnel forming the establishment for the time being, of AOC establishment or ordnance or clothing factory and enrolled personnel forming the establishment, for the time being, of a military hospital are examples of a detachment.

*Civil authorities.*—This includes political and police authorities.

4. Sub-sec. (2). This sub-sec. does not make the man's desertion a civil offence punishable by a criminal court.

**106. Inquiry into absence without leave.**—(1) When any person subject to this Act has been absent from his duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be assembled, and such court shall, on oath or affirmation administered in the prescribed manner inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessities; and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

#### NOTES

1. For procedure of courts of inquiry held under this section, see AR 183.

2. In the event of a person subject to AA being absent without leave for a period of 30 clear days, a court of inquiry must be assembled at once, unless before such court of inquiry has been assembled it has come to the knowledge of the person's CO that he has been apprehended or has surrendered or that he was involuntarily absent (e.g., in prison). In that case no court of inquiry will be held and the fact of his absence and of the deficiency (if any) of his clothing, etc., must be proved by oral evidence at any subsequent court-martial. As to dispensing with the court of inquiry in the case of a reservist who has failed to attend for training, etc., see Rule 9 of the Indian Reserve Forces Rules, 1925 (Part III).

3. In calculating the period of 30 days, the day on which the person became absent and the day on which the court of inquiry assembles must both be excluded. If the court of inquiry assembles a day too soon, the record of its declaration is not admissible in evidence, as an entry has not made in the regimental books in accordance with AA s. 142(3). The person, however should be declared illegally absent and charged with absence as from the day on which absence commences.

4. Prescribed manner.—See ARs 183 and 140. Evidence must be taken on oath or affirmation.

5. Before declaring any deficiency of arms, etc., the court of inquiry will satisfy itself by evidence that the absentee, was in possession of the missing articles within a reasonable period before the date of absenting himself. It will record the values of the unexpired wear of all articles of Government property including arms, equipment, public clothing, etc., found to be deficient.

6. The property of Government entrusted to his care—i.e., Government property issued to him for his use or entrusted to his care for military purposes.

A court of inquiry under this section does not inquire respecting a deficiency of public money or stores which had been in the absentee's charge.

7. The declaration of the court of inquiry should contain the date and place from which the person absented himself, the date of the deficiency (if any) of clothing etc., and the place where it occurred. Under AR 183 and this section the witnesses will be sworn/affirmed, but not the members of the court of inquiry. As to the form of declaration, See notes to AR 183; the actual values of missing articles will be stated.

8. In order to make the record admissible in evidence, it must be a record in the regimental books of the unit to which the person belonged at the time of the holding of the court of inquiry and entered by the then CO [AA.s. 142(3)]. The actual proceedings of the court of inquiry (which ought, under AR 183, to be destroyed as soon as its declaration is recorded in the regimental books) are not admissible in evidence.

The record of the finding of the court of inquiry will be admissible, notwithstanding that the person had already surrendered or been apprehended provided that such surrender or apprehension had not come to the knowledge of his CO when the court of inquiry assembled.

9. As soon as the declaration of illegal absence has been made and recorded, the person is struck off the strength of the unit as a deserter, but he does not thereby cease to belong to the corps in which he is enrolled; see Regs for the Army para 376.

10. When a person, who has been “struck off” as a deserter rejoins, the CO, if satisfied that the evidence does not justify a charge of desertion, may legally deal with the case as one of absence without leave.

11. As to disposal of deserter’s property, see Army and Air Force (Disposal of Private Property) Act, 1950 (Part III).

12. As to the period of limitation for trial, see AA.s. 122.

13. This section and AR 183 do not apply to the enrolled persons of the TA, when subject to AA. see AA.s. 2(1)(e); Rule 24 of the TA Rules, 1948 and schedule II to Rule 24.

**107. Provost-marshals.**—(1) Provost-marshals may be appointed by the (Chief of the Army staff)<sup>1</sup> or by any prescribed officer.

(2) The duties of a provost-marshal are to take charge of persons confined for any offence, to preserve good order and discipline, and to prevent breaches of the same by persons serving in, or attached to, the regular Army.

(3) A provost-marshal may at any time arrest and detain for trial any person subject to this Act who commits, or is charged with, an offence and may also carry into effect any punishment to be inflicted in pursuance of the sentence awarded by a court-martial, or by an officer exercising authority under section 80 but shall not inflict any punishment on his own authority:

Provided that no officer shall be so arrested or detained otherwise than on the order of another officer.

4. For the purposes of sub-sections (2) and (3), a provost-marshal shall be deemed to include a provost-marshal appointed under any law for the time being in force relating to the governance of the Navy or Air Force, and any person legally exercising authority under him or on his behalf.

#### NOTES

1. For definition of a ‘provost-marshal’, see AA.s. 3(xx). So far as his duties and powers are concerned, a ‘provost-marshal’ is also deemed to include a provost-marshal appointed under naval and air force law or any person legally exercising authority under him or on his behalf, see sub-sec. 4.

2. ‘Prescribed officer’.—See AR 197.

3. It is an offence under AA.s. 42(f) to impede the provost-marshal or any person, lawfully acting on his behalf or to refuse to assist the provost-marshal or person lawfully acting on his behalf.

4. Under AR 39(3) a provost-marshal or assistant provost-marshal is disqualified from serving as a member of a GCM or DCM. Similarly, AR 151(3) prohibits the provost-marshal or his assistant from sitting as members of the SGCM. An officer, who is serving with the corps of Military Police, should not normally sit as a member of any court-martial.

5. A provost-marshal or any officer working under him may at any time, arrest and detain for trial any person subject to AA (even though superior in rank) who commits or is charged with an offence. However, vide proviso to sub-sec (3), an officer can be arrested or detained only on the order of another officer. Similarly, though any member of the Corps of Military Police can legally arrest a JCO, a JCO should not be so placed in arrest except under orders of an officer or another JCO of the Corps of Military Police.

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<sup>1</sup>Substituted by Act No. 19 of 1955.

## CHAPTER X

### COURTS-MARTIAL

**108. Kinds of courts-martial.**—For the purposes of this Act there shall be four kinds of courts-martial, that is to say,—

- (a) general courts-martial;
- (b) district courts-martial;
- (c) summary general courts-martial; and
- (d) summary courts-martial.

#### NOTE

For purposes of easy reference, provisions dealing with the convening, composition etc., of the four types of courts-martial are tabulated below—

	Convening AA.s.	Composition AA.s.	Powers AA.s.	Confirmation AA.s.
GCM	109	113	118	154
DCM	110	114	119	155
SGCM	112	115	118	157
SCM	..	116	120	No confirmation required but see AA.s. 161(2)

**109. Power to convene a general court-martial.**—A general court-martial may be convened by the Central Government or the (Chief of the Army Staff)<sup>1</sup> or by any officer empowered in this behalf by warrant of the (Chief of the Army Staff).<sup>1</sup>

#### NOTES

1. For form of warrant, See Part IV. The 'A-1' warrant is at present, issued by the COAS to officers Commanding Army, Corps. Division/Area and Independent Brigade and to officers prescribed by the Central Government under AA.s. 8.

2. When a warrant has been issued and its contents communicated to the addressee, he can act upon it before it actually reaches him. It follows that he cannot act after he has received notification that the warrant has been revoked though he may not have received the actual order.

3. (a) In granting a warrant, it should be clearly shown that during the absence of the officer to whom such warrant is issued, the powers therein conferred may be exercised by the officer on whom the command devolves, if he is not under a specified rank. It is, therefore, common to address such a warrant to an officer by designation of his office and not by name.

(b) If the officer on whom the command devolves is the CO of the person to be tried or an officer who has investigated the case, he cannot (except on board a ship or in such special cases as may be determined by the Central Government) afterwards act as convening officer in the same case, but must refer it to a superior authority. See Regs for the Army para 449(b).

4. An officer cannot convene or confirm a court-martial held outside the territorial limits of his command; but an officer having power to convene a GCM at a port of embarkation can issue a warrant to the OC of the troops on board a ship empowering the latter to convene and confirm, on board the ship, during the period of the voyage, DCM in respect of a person under his command, who is subject to AA. The warrant thus given should be granted for the period of the voyage only, and will become inoperative as soon as the troops reach the port of disembarkation.

5. As to the duty of an officer before convening a court, see AR 37.

<sup>1</sup>Substituted by Act No. 19 of 1955.



**110. Power to convene a district court-martial.**—A district court-martial may be convened by an officer having power to convene a general court-martial or by any officer empowered in this behalf by warrant of any such officer.

#### NOTES

1. For form of warrant, see Part IV 'B-1' warrant which empowers, the holder thereof to convene as well as confirm the findings and sentences of DCSM is at present, issued to sub-area/brigade commanders by the officers empowered to convene a GCM. Such a warrant, has also been issued to officers prescribed by the Central Government under AA.s.8.

2. Also see notes 2 to 5 to AA.s. 109.

**111. Contents of warrants issued under sections 109 and 110.**—A warrant issued under section 109 or section 110 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

**112. Power to convene a summary general court-martial.**—The following authorities shall have power to convene a summary general court-martial namely—

- (a) an officer empowered in this behalf by an order of the Central Government or of the (Chief of the Army Staff);<sup>1</sup>
- (b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf;
- (c) an officer commanding any detached portion of the regular Army on active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by a general court-martial.

#### NOTES

1. The object of this section is to provide for the speedy trial of offences committed abroad or on active service in cases where it is not practicable, with due regard to the interests of discipline and of the service, to try such offences by an ordinary GCM or DCM. A SGCM can try any offence committed on active service but when troops are not on active service it can only be convened by an officer empowered in this behalf by an order of the Central Government or of the COAS.

2. The court can be convened by an officer commanding under clause (c) without a warrant or authorisation. For definition of 'regular Army': see AA.s. 3(xxi). Frequently, limitations are imposed by general orders of the Commander of the Forces as to who shall convene such Courts.

3. If troops on board a ship are on active service, the OC troops can convene a SGCM for trial of an offender on board.

4. For definition of active service, see AA.s. 3(i). Also see AA.s. 9.

**113. Composition of general court-martial.**—A general court-martial shall consist of not less than five officers, each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that of captain.

#### NOTES

1. For definition of 'officer' see AA.s. 3(xviii).

2. Number of officers.—(a) A convening officer can increase beyond the legal minimum the number of officers to sit on a court-martial, but cannot decrease the number below the minimum; he must therefore, take care to convene a court with not less than the minimum, otherwise the proceedings are void. See also AA.s. 117(1). It is desirable that every court should consist of an uneven number of officers.

(b) If originally more than the legal minimum sat and during the trial one was incapacitated by illness etc., the court could proceed with the trial provided the number did not fall below the legal minimum. The member who retired through sickness etc., cannot, of course, take his place when he recovers or is available once the court has sat without him. See AR 86.

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<sup>1</sup>Substituted by Act No. 19 of 1955.

(c) “Waiting” members can be detailed to replace absentees, or members successfully challenged (AR 44), before the Court is sworn/affirmed but if a waiting member sits in addition to all the members detailed, and not in place of an absentee etc., the court will be improperly constituted.

(d) If before the accused is arraigned, the full number of officers detailed are not available to serve and a sufficient number of waiting members have not been detailed, the court shall ordinarily adjourn unless it is of opinion that in the interests of justice and for the good of the service, it is inexpedient so to adjourn or unless it is reduced in number below the legal minimum [AR 38(1)].

3. *Service*.—A court would have no jurisdiction if each member had not held a commission for the required period, or if its composition differed in any respect from that detailed in the convening order. Any period during which an officer has held a commission in any of the three services shall count as commissioned service for this purpose, but no account shall be taken of an ante-date of seniority.

4. *Rank*.—Not less than four officers must be of the rank of Captain or above. Further, no officer below the rank of Captain can be a member of a court-martial for the trial of a field officer [AR 40 (3)].

5. As to the composition of GCsM and DCsM generally see ARs 39 and 40 and Regs for the Army para 460.

6. (a) The presiding officer of the GCM, DCM or SGCM is not detailed in the convening order but the senior member sits as the presiding officer (AA.s. 128).

(b) The members and waiting members of the court may be detailed by name or by their ranks and units to which they belong, and in case where units cannot be specified they should be named.

**114. Composition of district court-martial.**—A district court-martial shall consist of not less than three officers, each of whom has held a commission for not less than two whole years.

#### NOTES

1. See notes to AA.s. 113.
2. There is no statutory requirement as to the rank of a member of a DCM, but see Regs for the Army para 460.

**115. Composition of summary general court-martial.**—A summary general court-martial shall consist of not less than three officers.

#### NOTES

1. See notes 1, 2 and 6 to AAs. 113.
2. (a) Though there is no statutory requirement as to the rank or service of a member of a SGCM, officers appointed or detailed as members should have held commission for not less than one year and if any officers with commissioned service of not less than three years are available, they should be selected in preference to officers of less service [AR 151 (2)].
- (b) Any available officer, other than the provost-marshal, assistant provost-marshal, a prosecutor or witness for the prosecution may be appointed a member of the court. AR 151 (3). For instance, the convening officer can himself be a member of the court, but see AR 164 which makes inter-alia AR 74 (member or prosecutor not to confirm proceedings) applicable, so far as practicable, to a SGCM.

**116. Summary court-martial.**—(1) A summary court-martial may be held by the commanding officer of any corps, department or detachment of the regular Army, and he shall alone constitute the court.

(2) The proceedings shall be attended throughout by two other persons who shall be officers or junior commissioned officers or one of either, and who shall not as such be sworn or affirmed.

#### NOTES

1. *Sub-sec. (1)*.—‘Commanding officer’—
  - (a) See AA.s. 3(v).
  - (b) A medical officer commanding a hospital or other medical unit is the “Commanding Officer” of medical personnel under his command and is also, for the time being, the “Commanding Officer” of a person subject to AA not belonging to the medical, who is a patient in, or is

employed in that hospital or medical unit and may either himself dispose of a charge against such person or refer it for disposal, after the person has left the hospital or medical unit, to the officer commanding the corps, department or detachment to which such person belongs or is attached, but the medical officer in charge of a regimental medical establishment is not, unless that establishment is detached, the "Commanding Officer" of the establishment or of any person who is a patient in, or is employed in, the medical unit to which that establishment belongs.

- (c) An officer of the Indian Navy or the Air Force may become a CO of a person subject to AA when such person is serving under conditions prescribed in AR 188.

2. *Corps*.—See AR 187(3).

*Department*.—See AA.s. 3(ix).

*Detachment*.—means every separate body of persons subject to AA which is not a corps or department; see note 3 to AA.s. 105.

3. *Sub-sec. (2)*.—(a) For definitions of 'officer' and, 'JCO'. see AA.s. 3 (xviii) and (xii) respectively.

(b) Unless two officers or JCOs or one of either attend the trial throughout the Court will have no jurisdiction. Such officers or JCOs, who cannot take part in the proceedings as such, need not, however, belong to the unit of the accused.

4. If the CO does not himself take the interpreter's oath, one of the officers or JCOs attending the trial may be appointed interpreter. He may legally combine this duty with attendance at the trial under this section.

5. For trial of deserters, see Regs Army para 381.

**117. Dissolution of courts-martial.**—(1) If a court-martial after the commencement of a trial is reduced below the minimum number of officers required by this Act, it shall be dissolved.

(2) If, on account of illness of the judge advocate or of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(3) The officer who convened a court-martial may dissolve such court martial if it appears to him that military exigencies or the necessities of discipline render it impossible or inexpedient to continue the said court-martial.

(4) Where a court-martial is dissolved under this section, the accused may be tried again.

#### NOTES

1. "*Shall be dissolved*".—Apart from the conditions laid down in this section, in which the court must be dissolved, a court always has the power to adjourn (AR 82) and report to the convening officer when something has occurred, which, in the opinion of the court makes it improper or undesirable that it should continue to hear the case, e.g. if through inadvertence a previous conviction of the accused for a similar offence had been brought to the notice of the court before the finding. In such a case the convening officer, if he agrees with the opinion of the court, may dissolve it and convene a fresh court (AR 83). The members who sat on the dissolved court will be ineligible to sit on the fresh court [AR 39 (2)(c)].

2. *Sub-sec (1)*.—The trial is for the purposes of this section, held to have commenced when the accused is arraigned. See ARs 48, 85 and 86.

3. *Sub-sec. (2)*.—Illness of the accused or the JA.—A medical certificate should always, where possible, be obtained, stating that the illness of the accused/JA renders his presence in court impracticable or dangerous to himself or others; it will also state the medical officer's opinion as to when the accused/JA will be able to be present. See ARs 84 and 104.

4. *Impossible to continue*.—This means to continue within a reasonable time having regard to all the circumstances.

5. *Sub-Sec (4)*.—It may frequently be inexpedient to convene a fresh court for a re-trial under this sub-sec, especially where the accused has been for some time under arrest or in confinement.

**118. Powers of general and summary general courts-martial.**—A general or summary general court-martial shall have power to try any person subject to this Act for any offence punishable therein and to pass any sentence authorised thereby.

**NOTE**

When the court has a discretion whether to pass sentence of death or not, a sentence of death cannot be so passed by a GCM without the concurrence of at least two-thirds of the members or by a SGCM without the concurrence of all members of the court (AA.s. 132 (2) and (3)).

**119. Power of district courts-martial.**—A district court-martial shall have power to try any person subject to this Act other than an officer or a junior commissioned officer for any offence made punishable therein, and to pass any sentence authorised by this Act other than a sentence of death, (imprisonment for life)<sup>1</sup>, or imprisonment for a term exceeding two years;

Provided that a district court-martial shall not sentence a warrant officer to imprisonment.

**NOTE**

Powers of a DCM are limited in as much as it has no jurisdiction to try an officer or a JCO nor can it pass a sentence of death, imprisonment for life or imprisonment over two years. If such a court, therefore, passes a sentence of death or imprisonment for life or sentences a WO to imprisonment, it will be wholly illegal and must be sent back for revision by the confirming officer (AA.s. 160 and AR 68) and if wrongly confirmed, action should be taken under AA.s. 163 to substitute a valid sentence. However, a sentence of imprisonment for a period of three years to a NCO or sepoy being in excess of the punishment authorised by law can be varied by the confirming officer to a sentence authorised by law, i.e., imprisonment not exceeding two years and confirmed (AR 73 and notes thereto).

**120. Powers of summary courts-martial.**—(1) Subject to the provisions of sub-section (2), a summary court-martial may try any offence punishable under this Act.

(2) When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender, an officer holding a summary court-martial shall not try without such reference any offence punishable under any of the sections 34, 37 and 69, or any offence against the officer holding the court.

(3) A summary court-martial may try any person subject to this Act and under the command of the officer holding the court, except an officer, Junior commissioned officer or warrant officer.

(4) A summary court-martial may pass any sentence which may be passed under this Act, except a sentence of death or (imprisonment for life)<sup>1</sup> or of imprisonment for a term exceeding the limit specified in sub-section (5).

(5) The limit referred to in sub-section (4) shall be one year if the officer holding the summary court-martial is of the rank of lieutenant-colonel and upwards, and three months if such officer is below that rank.

**NOTES**

1. The discipline of the regular Army depends in a great measure on the SCM. When a person amenable to AA has committed an offence which is ordinarily triable by SCM, a CO when determining by what court the accused is to be tried, must bear in mind that the legislature, in conferring upon him the power of a SCM, intends that he shall exercise those powers.

2. *Sub-sec (1) and (2).*—(a) Though a SCM may, subject to the provisions of sub-sec (2), try an offence punishable under AA, it is obvious that its powers of punishment are insufficient for many of the graver offences known to military law. COs should, therefore, notwithstanding the increased powers of summary trial vested in them, submit to higher authority any cases which appear to require more exemplary

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<sup>1</sup> See IPC.s. 53A.

punishment than a SCM can award. It should, however, be remembered that even a comparatively slight punishment promptly inflicted is often more deterrent than a heavier one which follows long after the offence.

(b) The CO is the best and sole judge, at the time, of the necessity which justified him in trying, without reference, cases which should ordinarily be tried only after reference and sanction. If it should subsequently appear to superior authority that his action was not justified, this should merely be viewed as a grave irregularity for which the CO may be held responsible but it does not affect the legality of the finding or sentence nor, in ordinary circumstances, furnish reason for setting aside the trial, in whole or in part. Where, however, the officer holding the trial loses sight of the law, and tries without considering whether an emergency exists or not, the trial is illegal. See AR 130 for certificate to be attached to the proceedings by the officer holding the trial when he tries, without reference, a case which would ordinarily be referred to the officer empowered to convene a DCM or, on active service, a SGCM.

(c) The offences which are not ordinarily triable by a SCM without reference and sanction are: offences punishable under AA.ss. 34, 37 and 69 and offences against the officer holding the court.

(d) *Offence against the officer holding the trial.*—It is difficult to lay down a definite rule in this matter, but, speaking generally, a consideration of personal interest which would suffice to disqualify an officer to sit as a member of a GCM or DCM debars him from holding a SCM (save in case of emergency) without previous reference. Offences under AA. ss. 40 and 41 when committed towards a CO fall under this category, and should not, except in case of emergency, be tried by SCM without previous reference to the officer empowered to convene a DCM (or on active service a SGCM) for the trial of the alleged offender. Theft or misappropriation of property of which a CO is either part-owner or trustee (e.g., mess or regimental property) should not, except as aforesaid, be tried by SCM without such reference. The reasons behind this restriction are:

(i) It is most undesirable that an offence against an individual should be tried by that individual, and the reason for immediate action would require to be unusually weighty to justify the provision as to reference to higher authority being disregarded when the offence is one against the officer holding the trial.

(ii) At a trial by SCM the officer holding the trial cannot himself give evidence against an accused person appearing before him, except evidence of a formal character such as the production of document. But see AR 123 which authorises the court to record “of its own knowledge” certain facts for guidance in determining the sentence. If he gives formal evidence, he must be sworn/affirmed as, a witness.

Where it is necessary for the CO of the accused to give material evidence for the prosecution, he should apply for a DCM so as to secure an impartial trial.

3. *Sub-see (3).*—A SCM can only try a NCO or a sepoy.

4. Under the command of the officer holding the court—An officer holding the court, i.e., the CO of a unit cannot try a NCO or a sepoy by SCM unless such person is under his command, e.g., belongs to that unit on the date of trial. The only two exceptions to this rule are, in the case of trial of deserters or absentees without leave and in cases where such a person is a patient in a hospital. For trial of deserters, see Regs Army Para 381.

5. [x x x x x]<sup>1</sup>

6. *Sub-secs (4) and (5).*—The maximum punishment awardable by a SCM is imprisonment for one year if the officer holding the court is of the rank of Lt. Col and above and for three months if such an officer is below that rank.

7. As to the principles to be observed by a SCM in awarding sentence, see notes to AA.s. 169 and Regs Army para 448.

**121. Prohibition of second trial.**—When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been dealt with under any of the sections 80, 83, 84 and 85, he shall not be liable to be tried again for the same offence by a court-martial or dealt with under the said sections.

<sup>1</sup>Deleted by order of Govt of India, Min of Def letter No. B/80328/JAG/1585/2001-D (AG) dated 28 Aug 2001.

## NOTES

1. Finding of a GCM, SGCM or DCM, if not confirmed, is of no validity, in such case, therefore, the accused has not been acquitted or convicted, and may legally be tried again; see AA.s. 153; but re-trials should rarely be resorted to, and only when the needs of discipline and justice demand that an offender shall not escape punishment on account of a legal technicality. Re-trial should not be ordered until the DJAG of the command has been consulted and the sanction of superior authority obtained.

2. Where a court is not legally constituted and has no jurisdiction as for example, if the convening order is signed by or on behalf of an officer not authorised to convene such a court, or if the number of officers composing the court is below the legal minimum required for that type of court, or if unqualified officers sit—it is no court at all. The accused will not have been really tried, and may be tried again even though the proceedings of such illegally constituted court have been inadvertently confirmed.

Where, however, a conviction is confirmed and then quashed, not for improper constitution of the court, but because the trial was unsatisfactory—e.g. because evidence was improperly admitted—the accused has stood a trial and cannot be tried again.

3. It is a general principle of law—also incorporated as a fundamental right in Art 20 of the constitution—that a person cannot be tried twice in respect of the same offence; but the application of the rule is not always easy. Where the same incident, or set of incidents, gives rise to two trials, the test of whether the offence is “the same” offence would appear to be this: —Could the accused have been lawfully convicted at the first trial upon the charge-sheet then before the court, of the offence charged at the second trial? If so, the second trial is illegal and void. Thus. On a charge of desertion, a person could by virtue of AA.s. 139(1) be convicted of absence without leave: if he is acquitted generally, the acquittal applies to both offences and he cannot subsequently be charged with absence (upon the same facts); if, however, the court while acquitting him of desertion; convicts him of absence, and this finding is not confirmed, he has not been acquitted of absence, and can be charged again with that offence.

4. Where a person is re-tried on the same charge, it is not usual to impose a more severe punishment than that awarded on the first trial, and a confirming officer should exercise his powers of mitigation, etc. when confirming the proceedings, if a greater punishment has been awarded on the second trial.

5. Where a new trial is ordered no officer may serve on it who sat on the former court; AR 39(2)(c),

6. The section prohibits a second trial by court-martial or a criminal court or being dealt with again under AA.ss. 80, 83, 84 and 85.

7. See AR s 53(1) and 114, which provide that a plea in bar of trial may be raised on this ground.

**122. Period of limitation for trial.**—(1) Except as provided by sub-section (2), no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years and [such period shall commence,—

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the authority competent to initiate action, whichever is earlier.]<sup>1</sup>

(2) The provisions of sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37.

(3) In the computation of the period of time mentioned in sub-section (1), any time spent by such person as a prisoner of war, or in enemy territory, or in evading arrest after the commission of the offence, shall be excluded.

(4) No trial for an offence of desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the regular Army.

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<sup>1</sup>Substituted by Act No. 37 of 1992



## NOTES

1. Sub-secs (1) and (2).—(a) The effect of this section is that on the expiration of three years from the commission of the offence, the period of three years to be computed in accordance with sub-sec (3). The offender is free from being tried or punished under AA by a Court-martial for any offence except those mentioned in AA.s. 37, desertion or fraudulent enrolment. It follows that where an accused person is charged with desertion commencing on a date more than three years before his trial begins, he cannot be found guilty under AA.s. 139(1) of absence without leave from that date, but such absence must be restricted to a period not exceeding three years immediately prior to the commencement of the trial. Where, however, such a finding and sentence has been wrongly confirmed, the authorities specified in AA.s. 163 may substitute a valid finding and pass sentence for the offence specified or involved in such finding.

(b) A plea in bar of trial may be raised on this ground: AR 53(1)(c).

2. The section, does not prohibit deductions being ordered from his pay and allowances under AA.s. 90(a), (c), (g) and (h) or 91(a), (f) and (g) even though the period of limitation for trial has expired. Though the section specifically stipulates the period of limitation for trial by court-martial, the same principle would equally apply to summary disposal of offences under AA.s. 80, 83, 84 or 85.

3. (a) Offences mentioned in AA.s. 37 and desertion on active service can be tried at any time by a court-martial. For desertion not on active service and fraudulent enrolment, a person, not being an officer, cannot be tried if he has since served continuously in an exemplary manner for not less than three years with any portion of the regular Army. See sub-sec (4).

(b) A person is considered as having served in an exemplary manner if at any time during his service subsequent to the commission of the offence he has had no red ink entry in his conduct sheet for a continuous period of five years and ten years for other ranks and officers respectively (Regs for the Army paras 170 and 465A). For 'red ink entries' see Regs Army paras 386 and 387(b).

4. (a) An 'offence' includes a 'civil offence' as defined in AA.s. 3(ii); see AA.s. 3(xvii). Where, therefore, a person subject to AA has committed a civil offence and his trial by court-martial is barred under this section, he may be handed over to the civil authorities to be dealt with according to law as a civil offence is triable by a criminal court at any time.

5. For forfeiture of service in the case of desertion and fraudulent enrolment, see Regs Pension Reg 123.

6. Sub-sec (3): The period of three years referred to in sub-sec (1) is extended by any time spent by the offender as a prisoner of war, or in enemy territory or in evading arrest after the commission of the offence; for instance, if a person absconds immediately after misappropriating Govt or regimental funds and later surrenders or is apprehended after the expiry of three years, he can still be tried by a court-martial, the period during which he had absconded being ignored.

7. 'Enemy territory' means any area, at the time of the presence therein of the person in question, under the sovereignty of or administered by or in the occupation of a state at that time at war with the Union.

8. Sub-sec (4).—'On active service', see AA. ss. 3(i) and 9.

9. See note 3(b) above. This exemption does not apply to an officer.

10. 'Regular Army' see AAs. 3(xxi).

**123. Liability of offender who ceases to be subject to Act.**—(1) Where an offence under this Act had been committed by any person while subject to this Act, and he has ceased to be so subject, he may be taken into and kept in military custody, and tried and punished for such offence as if he continued to be so subject.

(2) No such person shall be tried for an offence, unless his trial commences [within a period of three years after he had ceased to be subject to this Act; and in computing such period, the time during which such person has avoided arrest by absconding or concealing himself or where the institution of the proceeding in respect of the offence has been stayed by an injunction or order, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.]

Provided that nothing contained in this sub-section shall apply to the trial of any such person for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37 or shall affect the jurisdiction of a criminal court to try any offence triable by such court as well as by a court martial.

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1. Subs by Act No 37 of 1992

(3) When a person subject to this Act is sentenced by a court-martial to (imprisonment for life)<sup>1</sup> or imprisonment, this Act shall apply to him during the term of his sentence, though he is cashiered or dismissed from the regular Army, or has otherwise ceased to be subject to this Act, and he may be kept, removed, imprisoned and punished as if he continued to be subject to this Act.

(4) When a person subject to this Act is sentenced by a court-martial to death, this Act shall apply to him till the sentence is carried out.

#### NOTES

1. This section meets the case of a person who commits an offence against AA whilst subject to it, and then ceases to be subject to it. Such cases will occur, for example, when an officer relinquishes his commission or is dismissed or when a JCO, WO or OR is discharged.

2. (a) Such a person though he has ceased to be subject to AA even before discovery of the offence may nevertheless be arrested, tried and punished just as if he were 'still so subject but he can only be tried within three years after he has ceased to be so subject; the three years will not be deemed to have expired if the trial has commenced within that period. An exception has been made in the case of desertion, fraudulent enrolment and offences mentioned in AA.s. 37, for which he can be tried at any time subject to the restrictions in AA.s. 122. Further, a criminal court can try such offence, if triable by it as well as a court-martial, though the offence is no longer triable by a court-martial under sub-sec. (2).

(b) When the three years have once expired, the offender is protected and his liability is not revived in respect of the earlier offence, by his again becoming subject to AA.

3. *Sub-Sec (3).*—Under this sub-sec. which deals, with the case of a person subject to AA who is tried and sentenced to imprisonment for life or imprisonment to be undergone in a civil prison, AA applies to such a person during the term of his sentence, notwithstanding that his cashiering or dismissal from the service has been formally carried out, or that he has otherwise ceased to be subject to AA. Consequently he may be tried by court-martial for an offence committed by him while under sentence at any time before his sentence is completed or he may be kept in or removed to military custody and made to undergo his sentence there although the sentence is one to be undergone in a civil jail. Also see. AR 168.

**124. Place of trial.**—Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.

#### NOTES

1. 'Any place whatever' means any place in which the offender may for the time being be and which is within the jurisdiction of an officer authorised to convene a court-martial for his trial as if the offence had been committed where the trial takes place and the offender were under the command of the officer convening such court.

2. The section enables a court-martial convened in India to try a person for an offence committed elsewhere and vice versa. See Regs Army para 452(c).

**125. Choice between criminal court and court-martial.**—When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding the army, army corps, division or independent brigade in which the accused person is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and if that officer decides that they should be instituted before a court-martial, to direct that the accused person shall be detained in military custody.

#### NOTES

1. (a) For definitions of 'criminal court' and 'court-martial' see AA.s. 3(viii) and (vii) respectively.

(b) All civil offences can be tried by a court-martial (subject to the provisions of AA.s. 70) or by a criminal court. See also Regs for the Army para 419 (a).

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<sup>1</sup>See IPC. s. 53A

(c) Where there is a dual jurisdiction as indicated above, the choice initially lies with the military officers mentioned in this section to decide whether an accused should be dealt with by a court-martial or he should be handed over to the civil authorities for being dealt with according to civil law.

(d) The 'prescribed officer' for the purpose of this section is the officer commanding the brigade or station in which the accused person is serving, except where death has resulted from the alleged offence, in which case the lowest competent military authority is the officer commanding a division/area or independent brigade. AR 197.A.

2. (a) Where a criminal court having jurisdiction considers that the accused should be tried before itself, it may, in writing, call upon the officer referred to in this section to hand over the accused to it for trial, in which case the said officer should either hand over the accused as demanded or pend the proceedings and refer the case to the Central Government (AA. s. 126).

(b) When a person subject to AA is brought before a magistrate and charged with an offence for which he is liable to be tried by a court-martial, such magistrate, unless he is moved by the competent military officer referred to in AA.s. 125 to proceed against the accused under the Cr PC, 1973, shall before so proceeding give written notice to the CO of the accused and, until the expiry of fifteen days from the date of service of such notice, shall not proceed to try such person or to inquire with a view to his commitment for trial by the court of sessions for any offence triable by such court; see Government of India Ministry of Home Affairs notification S.O. 488 dated 9 Feb. 1978, the criminal courts and court-martial (Adjustment of Jurisdiction) Rules, 1978 and Regs Army para 418.

3. An offender is normally handed over to the civil authorities for trial where he is alleged to have committed an offence in collaboration with other persons who are not subject to military law.

**126. Power of criminal court to require delivery of offender.**—(1) When a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice require the officer referred to in section 125 at his option, either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government.

(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Central Government, whose order upon such reference shall be final.

#### NOTE

See notes to AA.s. 125.

**127.** [Omitted]<sup>1</sup>

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<sup>1</sup>Omitted by Act No. 37 of 1992

## CHAPTER XI

## PROCEDURE OF COURTS-MARTIAL

**128. Presiding officer.**—At every general, district or summary general court-martial the senior member shall be the presiding officer.

## NOTES

1. See note 6 to AA.s. 113 and Regs for the Army para 460.
2. As to duties of presiding officer, *see* AR 76.

**129. Judge Advocate.**—Every general court-martial shall, and every district or summary general court-martial may be attended by a judge advocate, who shall be either an officer belonging to the department of the Judge Advocate General or if no such officer is available, any person approved of by the Judge Advocate General or any of his deputies.

## NOTES

1. (a) Presence of a JA at a GCM is a legal necessity and his non-attendance there at will invalidate the proceedings.
- (b) A court-martial, in the absence of a judge advocate (if such has been appointed) shall not proceed and shall adjourn. AR 82 (4).
2. Any 'officer' of the JAG's department or, if such officer is not available, an officer approved by the JAG or one of his deputies can attend as JA. Although at a DCM and SGCM, appointment of a JA is not legally necessary, in practice a JA is nominated by the DJAG command concerned. Invalidity in the appointment of a JA does not vitiate the trial: AR 103.
3. The accused has no right to object to the JA, *see* AA. s. 130.
4. As to powers and duties of a JA, *see* AR 105.
5. For substitution of a JA on death, illness or absence *see* AR 104.

**130. Challenges.**—(1) At all trials by general, district or summary general court-martial, as soon as the court is assembled, the names of the presiding officer and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

(2) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded and the remaining officers of the court shall, in the absence of the challenged officer decide on the objection.

(3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(4) When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

## NOTES

1. As to challenges generally *see* AR 44 and notes thereto; as to adjourning for the purpose of appointing fresh members, and the power to convene another court *see* AR 38; and as to challenges where a court is being sworn/affirmed to try several persons, *see* AR 89.
2. The accused has no right to object to the JA or prosecutor.

**131. Oaths of member, judge advocate and witness.**—(1) An oath or affirmation in the prescribed manner shall be administered to every member of every court-martial and to the judge advocate before the commencement of the trial.

(2) Every person giving evidence before a court-martial shall be examined after being duly sworn or affirmed in the prescribed form.

(3) The provisions of sub-section (2) shall not apply where the witness is a child under twelve years of age and the court-martial is of opinion that though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation.

#### NOTES

1. Sub-sec (1).—(a) Prescribed form/manner of oath or affirmation :

- (i) for a member of the court. ARs 45, 109 and 155;
- (ii) for the JA, officer attending for the purposes of instruction, shorthand writer and interpreter, ARs 46, 109 and 155.

(b) The person to administer oaths or affirmation is prescribed by AR 47.

2. The oath/affirmation taken by the members of the court binds them in their capacity of jurors to find a true verdict according to the evidence (discarding from their minds any private knowledge or information they may happen to possess), and in their capacity of judges to administer justice; and to keep secret the votes or opinions of other members. See note 8 to AR 45 and AA. s. 132 (2).

3. No member can be added to the court after it is sworn/affirmed.

4. *Sub-sec (2).*— The prescribed form of oath or affirmation for witness and the person to administer it are prescribed in AR 140.

5. (a) Refusal by a witness subject to AA to take an oath or make an affirmation is punishable under AA. s. 59(b).

(b) Giving false evidence on oath/affirmation is an offence under AA. s. 60.

(c) If a civilian witness refuses to take the oath or make an affirmation or gives false evidence on oath/affirmation, action should be taken by the court as indicated in AR 150(3). See notes to AR 150(3).

6. *Sub-sec (3)*—This provision is based on the proviso to s. 5 of the Oaths Act, 1873.

**132. Voting by members.**—(1) Subject to the provision of sub-section (2) and (3), every decision of a court-martial shall be passed by an absolute majority of votes; and where there is an equality of votes on either the finding or the sentence, the decision shall be in favour of the accused.

(2) No sentence of death shall be passed by a general court-martial without the concurrence of at least two-thirds of the members of the court.

(3) No sentence of death shall be passed by a summary general court-martial without the concurrence of all the members.

(4) In matters, other than a challenge or the finding or sentence, the presiding officer shall have a casting vote.

#### NOTES

1. As to manner of voting, see AR 87 and notes.

2. See note 6 to AA.s. 71 regarding endorsement to be made where a GCM or SGCM sentences the offender to death.

3. As to procedure on incidental questions, see AR 88.

**133. General rule as to evidence.**—The Indian evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, apply to all proceedings before a court-martial.

## NOTES

1. Indian Evidence Act 1872 has been reproduced in Part III of the manual. Also see generally Part I chapter VI.

2. "Subject to the provisions of this Act" -See AA.ss. 134, 140 to 144 and ARs 134 to 143.

**134. Judicial Notice.**—A court-martial may take judicial notice of any matter within the general military knowledge of the members.

## NOTES

1. "Judicial notice" means that the court will recognize a matter without formal evidence. Thus, evidence need not be given as to the relative rank of officers, as to the general duties, authorities and obligations of different members of the service, or generally as to any matters which an officer, as such, may reasonably be expected to know.

2. For other matters of which a court may take judicial notice, see IEA. s. 57. Also see IEA. ss. 56 and 58.

**135. Summoning Witnesses.**—(1) The convening officer, the presiding officer of a court-martial [or courts of inquiry]<sup>1</sup>, the judge advocate or the commanding officer of the accused person may, by summons under his hand, require the attendance, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

(2) In the case of a witness amenable to military authority, the summons shall be sent to his commanding officer, and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with reasonable precision.

## NOTES

1. As to privilege from arrest under civil or revenue process of a witness summoned to attend before a court-martial, see AA. s. 30.

2. When an application has been made for a court-martial, no military witness will be allowed to leave the station without the sanction of the convening authority nor will witnesses disperse after trial without the previous sanction of such authority. See Regs for the Army para 456.

3 For form of summons, see Appendix III (part III) to AR.

4. See also ARs 22(1), 137 and notes thereto,

5. *Sub-sec (1).*—(a) Under this sub-sec, a civilian witness can be required to attend before a CO, a Court of Inquiry or at the taking of the summary of evidence, or a court-martial; but see AR 23(5).

(b) 'Under his hand'.—Such summons be signed by the officer specified in this sub-sec; but see AR 5.

6. *Sub-sec (2).*— Witnesses who are subject to AA should be ordered by the proper authority to attend without the issue of a formal summons. If no summons has been issued, the witness cannot be dealt with under AA. s. 59 for making default in attending, but he may be dealt with under AA. s. 41 or 63, as the case may be.

7. *Sub-sec (3).*—For action where a civilian witness, who has been duly summoned and whose expenses have been tendered, makes default in attending, see AR 150(3) and notes thereto. A civilian witness is not deemed to be duly summoned unless the summons is served on him through a magistrate as required under this sub-sec.

8. *Sub-sec (4).*—When a witness is directed by summons to produce a document etc., which is in his possession or power, he must bring it to court, notwithstanding any objection that he may have with regard to its production or admissibility. After this has been done, it rests solely with the court to hear the

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<sup>1</sup> Inserted by Act No. 37 of 1992.



objection or the claim as to privilege, and to decide whether it should be allowed; IEA. s. 162. Also see, Regs. Army para 320.

9. A witness summoned merely to produce a document shall be deemed to have complied with the summons if he causes it to be produced instead of attending personally to produce the same.

**136. Documents exempted from production.**—(1) Nothing in section 135 shall be deemed to affect the operation of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or to apply to any letter, postcard, telegram or other document in the custody of the postal or telegraph authorities.

(2) If any document in such custody is, in the opinion of any district magistrate, chief presidency magistrate, High Court or Court of Sessions, wanted for the purpose of any court-martial, such magistrate or Court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate or Court may direct.

(3) If any such document is, in the opinion of any other magistrate or of any commissioner of police or district superintendent of police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause search to be made for and to detain such document pending the orders of any such district magistrate, chief presidency magistrate or High Court or Court of Session.

#### NOTES

1. *Sub-sec (1).*—IEA. ss. 123 and 124 deal with “affairs of State” and “official communications”. See Regs. Army para 320, as to how such matters are protected from disclosure in courts of law, including courts-martial, except under adequate guarantees for public interests being safeguarded. “Affairs of State” include all matters of a public nature with which the Government is concerned.

2. *Sub-secs (2) and (3).*—These sub-secs indicate the only way in which letters, postcards, telegrams and similar documents in the custody of the postal or telegraph authorities can be made available as evidence. If none of the authorities mentioned in sub-sec (2) are available, and it is considered necessary that the document should be detained until such authority is communicated with, application should be made to one of the authorities mentioned in sub-sec (3), one of whom is certain to be present in or near any military station in India, however small.

**137. Commissions for examination of witnesses.**— (1) Whenever, in the course of a trial by court-martial, it appears to the court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Judge Advocate General in order that a commission to take the evidence of such witness may be issued.

(2) The Judge Advocate General may then, if he thinks necessary, issue a commission to any district magistrate or magistrate of the first class, within the local limits of whose jurisdiction such witness resides to take the evidence of such witness.

(3) The magistrate or officer to whom the commission is issued, or if he is the district magistrate, he or such magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner and may for this purpose exercise the same powers, as in trials of warrant cases under the Code of Criminal Procedure, 1973 [ 2 of 1974 ]<sup>1</sup> or any corresponding law in force in [the State of Jammu and Kashmir].<sup>2</sup>

(4) When the witness resides in a tribal area or in any place outside India, the commission may be issued in the manner specified in [Chapter XXII, of the Code of Criminal Procedure, 1973 [ 2 of 1974 ]<sup>1</sup> or of any corresponding law in force in [the State of Jammu and Kashmir]<sup>2</sup>.

(5) In this and the next succeeding section, the expression “Judge Advocate General” includes a Deputy Judge Advocate General.

<sup>1</sup>Substituted by Act No. 37 of 1992

<sup>2</sup>Substituted by the adaption of Laws (no. 3) Order 1956.

## NOTES

1. This section and the next provide for the examination of witness “on commission”, that is, by means of a series of written questions decided upon by the court trying the case, which questions are sent to another court at a distance and put by it to the witness whose answers are then recorded. It will be noticed that the procedure here laid down can only be set in motion by a court-martial assembled for the trial of the accused, and then only in the circumstances specified in sub-sec (1), while the actual issue of the commission can only be effected by, the JAG or the Dy JAG.

When a court-martial considers that the evidence of a witness should be taken on commission it should forward to the Dy JAG of the command (or to the JAG if the trial is not held in command or is held in a command in which there is not a Dy JAG) a list of questions to be put to the witness, along with an explanation of the circumstances which appear to render his examination on commission necessary. Any questions which the prosecutor or the accused desire to have put to the witness, and which the court considers relevant, should be added.

2. The taking of evidence by commission in courts-martial should be most sparingly resorted to, and ought not to be adopted save in extreme cases of delay, expense or inconvenience. The following considerations should guide courts-martial in this important matter :—

- (a) A complainant, or a witness who practically fills the role of complainant, should never be examined on a commission; the risk of injustice to the accused is too great.
- (b) A material prosecution witness, the value of whose evidence can only be made apparent under full examination and cross-examination in court should very seldom be so examined.
- (c) A merely “formal” or corroborative witness for either side, or a material witness for the defence, if the accused is fully satisfied by this action, might generally be examined on a commission. By “formal” is here meant a witness who has to prove a document, entry, or similar fact which must be legally proved, but which when so proved cannot rationally be disputed by the accused or by the prosecution.

**138. Examination of a witness on commission.**—(1) The prosecutor and the accused person in any case in which a commission is issued under section 137 may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the magistrate or officer executing the commission shall examine the witness upon such interrogatories.

(2) The prosecutor and the accused person may appear before such magistrate or officer by counsel or, except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine as the case may be, the said witness.

(3) After a commission issued under section 137 has been duly executed, it shall be returned, together with the deposition of the witness examined there-under to the Judge Advocate General.

(4) On receipt of a commission and deposition returned under sub-section (3), the Judge Advocate General shall forward the same to the Court at whose instance the commission was issued, or if such court has been dissolved, to any other court convened for the trial of the accused person; and the commission, the return thereto and the deposition shall be open to inspection by the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the court.

(5) In every case in which a commission is issued under section 137, the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

## NOTES

1. See notes to AA. s. 137.

2. Evidence taken on commission at the instance of a court-martial which has been dissolved is admissible before another court-martial assembled for the trial of the accused (of course, only on the same or substantially the same charges). If great delay in the return of a commission is anticipated, advantage

may be taken of this provision and the original court dissolved. In such a case, however, each of the witnesses who gave evidence at the first trial must repeat this evidence on oath or affirmation at the second trial unless—

- (a) he is dead or cannot be found; or
- (b) he is incapable of giving evidence; or
- (c) he is kept out of the way by the adverse party; or
- (d) his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable.

In any of these cases the evidence given at the first trial can, under IEA.s. 33, be read and considered at the second trial.

**139. Conviction of offence not charged.**—(1) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A person charged before a court-martial with attempting to desert may be found guilty of being absent without leave.

(3) A person charged before a court-martial with using criminal force may be found guilty of assault.

(4) A person charged before a court-martial with using threatening language may be found guilty of using insubordinate language.

(5) A person charged before a court-martial with any one of the offences specified in clauses (a), (b), (c) and (d) of section 52 may be found guilty of any other of these offences with which he might have been charged.

(6) A person charged before a court-martial with an offence punishable under section 69 may be found guilty of any other offence of which he might have been found guilty as if the provisions of the Code of Criminal Procedure, 1973 (2 of 1974)<sup>1</sup>, were applicable.

(7) A person charged before a court-martial with any offence under this Act, may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment.

(8) A person charged before a court-martial with any offence under this Act may be found guilty of having attempted or abetted the commission of that offence, although the attempt or abetment is not separately charged.

#### NOTES

1. The object of this section is to prevent a miscarriage of justice by permitting a person charged with one of the offences mentioned in it to be found guilty of a cognate offence. But a court-martial has no power to find a person guilty of offence other than that with which he is charged in the statement of the offence except in the cases specified in this section (see notes in AR 30). A Court may, however, (as allowed by AR 62(5)) find a person guilty of a charge with the exception of certain words in the particulars of the charge or with certain immaterial variations, and this finding will be valid as long as in its reduced or varied form it discloses the offence which forms the subject of the charge.

2. Alternative charges should not be preferred in the cases provided for in this section but in other cases where the facts disclose a greater and a lesser offence it may in practice be expedient to prefer alternative charges, the more serious offence being placed first in order (see note to AR 52(3)).

3. This section does not permit a court-martial to find an accused guilty of one or other of two offences e.g., a finding of “not guilty of theft but guilty of dishonest misappropriation or criminal breach of trust.”

4. This section does not apply to summary awards under AAs. 80, 83, 84 or 85 but in such cases the officer dealing with the case, if not the CO, can have the charge amended by the CO.

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<sup>1</sup>Substituted by act No. 37 of 1992

5. *Sub-sec (1).*—Care must be taken in this case to ensure that the provisions of AA.s. 122 are not offended.

6. *Sub-sec (5).*—The special finding under this sub-sec applies only where the charge is laid under one of the specified clauses of AA.s. 52 and not when the accused is charged under AA.s. 69 with having committed the civil offence of theft etc., for which see sub-sec (6).

7. *Sub-sec (6).*—For the special findings referred to in this sub-sec, see Cr PC, 1973, ss. 221 and 222 (Part III).

8. *Sub-sec (7).*—Thus, a person charged with using criminal force to his superior officer in the execution of his office may be convicted of using criminal force to his superior officer; or a person charged with an offence committed on active service may be found guilty of the same offence committed not on active service; or a person charged with wilfully allowing the escape of a person in his charge may be found guilty of allowing his escape without reasonable excuse.

9. *Sub-sec (8).*—(a) Where a person charged with an offence is found guilty of having attempted or abetted the commission of that offence and no express provision has been made for the punishment for such attempt or abetment, the punishment will be laid in as specified in AA.s. 65 for attempt and AA.s. 66 to 68 for abetment.

(b) AA.s. 38(1), 51 and 64(e) make attempt to commit the offences specified therein as substantive offences.

**140. Presumption as to signatures.**—In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the service of the Government shall, on production, be presumed to have been duly signed by the person by whom and in the character in which it purports to have been signed, until the contrary is shown.

#### NOTES

1. *Purporting.*—See note 3. to AA.s. 142.

2. The presumption only relates to the signature and the character by whom and in which it purports to have been signed and not to the contents of the document. The application, certificate, warrant etc., must be admissible in evidence as such, and upon its being admitted, the presumption in question can be drawn.

**141. Enrolment paper.**—(1) Any enrolment paper purporting to be signed by an enrolling officer shall in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given.

(2) The enrolment of such person may be proved by the production of the original or a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper.

#### NOTES

1. On the trial of a person subject to AA for making a false answer on enrolment or for fraudulent enrolment, the answer made or the fact of enrolment can be proved by the production of his enrolment paper. The fact of the enrolment (but not any answer made on enrolment) may also be proved by a properly certified true copy of the enrolment paper. The enrolment paper, or when admissible the true copy thereof, must be produced by a witness on oath or affirmation and the accused identified as the person referred to.

2. Where a certified true copy of the enrolment paper is admissible, it must purport to be so certified by the officer having custody of the enrolment paper and not by a subordinate officer 'for' him.

3. See generally notes to AA.s. 142.

**142. Presumption as to certain documents.**—(1) A letter, return or other document respecting the service of any person in, or the cashiering, dismissal or discharge of any person, from any portion of the regular Army, or respecting the circumstances of any person not having served in, or belonged to any portion of the Forces, if purporting to be signed by or on behalf of the Central Government or the (Chief of the Army Staff)<sup>1</sup>, or by any prescribed officer, shall be evidence of the facts stated in such letter, return or other document.

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<sup>1</sup>Substituted by act No. 19 of 1955

(2) An Army, Navy or Air Force List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers, junior commissioned officers or warrant officers therein mentioned, and of any appointment held by them and of the corps, battalion or arm or branch of the services to which they belong.

(3) Where a record is made in any regimental book in pursuance of this Act or of any rules made thereunder or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts therein stated.

(4) A copy of any record in any regimental book purporting to be certified to be a true copy by the officer having custody of such book shall be evidence of such record.

(5) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of any officer or other person subject to this Act, or any portion of the regular Army, or has been apprehended by such officer or person, a certificate purporting to be signed by such officer, or by the commanding officer of that portion of the regular Army, or by the commanding officer of the corps, department or detachment to which such person belongs, as the case may be, and stating the fact, date and place of such surrender or apprehension, and the manner in which he was dressed, shall be evidence of the matters so stated.

(6) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by a police officer not below the rank of an officer in charge of a police station, a certificate purporting to be signed by such police officer and stating the fact, date and place of such surrender or apprehension and the manner in which he was dressed shall be evidence of the matters so stated.

(7) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government [or any of the Government scientific experts, namely, the Chief Inspector of the Explosives, the Director of the Finger Print Bureau, the Director, Haffkeine Institute, Bombay, the Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory and the Serologist to the Government]<sup>1</sup> upon any matter or thing duly submitted to him for examination or analysis and report, may be used as evidence in any proceeding under this Act.

#### NOTES

1 As to documentary evidence generally see IEA.ss. 61 to 90 (Part III). The provisions of the Indian Evidence Act, which apply to the court-martial proceedings and further supplemented by the provisions relating to evidence in AA e.g. AA ss. 134, 140 to 144.

2. (a) This section provides for the admissibility in evidence of a variety of documents or copies of documents used in connection with military administration, but does not make them conclusive proof of the facts stated in them; therefore evidence may be given to contradict them.

(b) The documents made admissible in evidence by this section can only be received as such when produced by a witness on oath or affirmation.

(c) A document purporting to be such a document as specified in the various sub-secs is upon mere production on oath or affirmation to the court *prima facie* evidence of the facts therein stated; but, of course, it is not evidence that the accused is the person to whom it relates; and evidence must be given on oath or affirmation by witness to prove that the accused is in fact the person referred to in the document. If the accused disputes the identity, great caution is required as to the sufficiency of the evidence, and if he disputes the accuracy or completeness of the books further evidence on the disputed points must be adduced.

3. *Purporting*— This expression that if the paper appears to be certified or signed, as mentioned in the sub-sec, it can be accepted without calling a witness to prove that it has been so certified, signed, etc., unless, indeed some evidence is given to the contrary. If any evidence is given casting a doubt on the authenticity of a document, the court should require evidence of the certificate or signature, etc. to be given by a witness.

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<sup>1</sup>Inserted by Act No. 37 of 1992.

4. *Sub-sec (1).*—(a) This sub-sec is limited to proof of the fact of length of service or date of dismissal or discharge: it does not assist proof of particular incidents occurring during such service. A telegram, as delivered by the telegraph department, respecting the service of a person is not signed at all and would not be admissible.

(b) As to prescribed officer, see AR 198.

5. *Sub-sec (2).*—Documents under this sub-sec need not be produced on oath/affirmation but may be handed in to the court.

6. *Sub-sec (3).*—The phrase ‘any regimental book’ means ‘any regimental book’ specified in Regs Army para 610 to be maintained by corps and departments.

7. It should be noted that every entry in a regimental book is not made evidence under this sub-sec; the entry must be made for the purpose of being used as a record, and must be made in pursuance of AA or of any rules made thereunder or in pursuance of military duty, and it must purport to be signed by the CO or by the officer whose duty it is to make the record. No hard and fast rules can be laid down as to what entries can properly be considered as “records”, but as a general rule this sub-sec should only be taken advantage of in cases, where a formal record, *prima facie* of non-controversial character, is made in a regimental book of record in pursuance of AA, the AR or of military duty and purporting to be signed in accordance with this sub-sec. Entries which cannot properly be considered as records, such as daily entries in accounts, and entries in books not being “regimental books”, such as book of a brigade or station office and company order books, can, of course, be proved under the ordinary provisions of the Indian Evidence Act.

8. The fact that a statement is recorded in a “regimental book” does not make it admissible in evidence if it is otherwise legally objectionable, e.g., if a court of inquiry under AA.s. 106 be held before 30 clear days have expired, a record of its finding is inadmissible.

9. *Sub-sec (4).*—Such a copy cannot be certified by another officer “for” the officer having the custody of the book.

10. Where a certified true copy of a record in any “regimental book” is to be produced, the copy should show clearly that the record purports to have been signed by the CO or by the officer whose duty it was to make the record.

11. Where IAFD-918 is to be produced, it must be signed by the officer having the custody of the books from which it is compiled. The original declaration of the court of inquiry even if in existence, is not admissible in evidence. Nor is IAFD-918, unless the entry in the court-martial book (of which it is a certified copy) purports to have been signed by the officer in actual command of the accused’s corps or department, as required, by AA.s. 106.

12. *Sub-sec (5).*—In this sub-sec and sub-sec (6), the certificate should only state the fact, date and place of surrender or apprehension and the manner in which the offender was dressed; it can only be admitted as evidence of those facts and then only cases of desertion or absence without leave. If it is necessary to prove the circumstances of the surrender or apprehension, a witness must be called.

13. If the deserter or absentee surrenders to or is apprehended by any officer, the certificate must purport to be signed by that officer. But if the offender surrenders himself to a JCO, WO, NCO or Sepoy of any unit, department or detachment, or if the offender is apprehended by a JCO, WO, NCO, or sepoy, the certificate must purport to be signed by the CO of such JCO etc., of that unit, department or detachment.

14. The certificate must purport to be signed by the officer indicated and not by another officer ‘for’ him.

15. *Sub-sec (6).*—See note 12 above.

16. Under this sub-sec it is essential that the certificate should be actually signed by a police officer not below the rank of officer incharge of a police station. It is, however, not necessary that it must be signed by the police officer incharge of the police station concerned. The certificate should be on IAFD-910.

17. *Sub-sec (7).*—This sub-sec applies only to the report signed by any Chemical Examiner to the Government or his assistant and not to the report of any other Govt scientific experts mentioned in this sub-sec.

**143. Reference by accused to Government officer.**—(1) If at any trial for desertion or absence without leave, overstaying leave or not rejoining when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorised



absence, and refers in support thereof to any officer in the service of the Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn the proceedings until his reply is received.

(2) The written reply of any officer so referred to shall, if signed by him be received in evidence and have the same effect as if made on oath before the court.

(3) If the court is dissolved before the receipt of such reply, or if the court omits to comply with the provisions of this section, the convening officer may, at his discretion annul the proceedings and order a fresh trial.

#### NOTE

This section goes much further than AA.s. 140 in as much as the document, e.g., written reply is prima facie evidence not only of the signature of the writer and the character in which it was signed but also of the truth of the facts stated therein.

**144. Evidence of previous convictions and general character.**—(1) When any person subject to this Act has been convicted by a court-martial of any offence, such court-martial may inquire into, and receive and record evidence of any previous convictions of such person either by a court-martial or by a criminal court, or any previous award of, punishment under any of the sections, 80, 83, 84 and 85, and may further inquire into and record the general character of such person and such other matters as may be prescribed.

(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, court-martial books or other official records; and it shall not be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(3) At a summary court-martial the officer holding the trial may, if he thinks fit, record any previous convictions against the offender, his general character, and such other matters as may be prescribed, as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this section.

#### NOTES

1. This section should be read with ARs 64 and 123 which prescribe the other matters which may be proved.

2. Character includes both reputation and disposition but apart from previous conviction, evidence of character, where admissible, may only be given of general reputation and general disposition and not of particular acts by which reputation or disposition were shown (IEA.s. 55, Explanation).

3. In criminal proceedings, which include trials by court-martial, the fact that the accused is of general good character is always relevant but evidence of the accused's bad character is relevant and admissible only in the following cases:

- (a) After a finding of 'guilty', to enable the court to determine the quantum of punishment.
- (b) Before the finding of guilty—
  - (i) If the accused has in the first instance through the defence witnesses given evidence of good character, the whole question of his character, good or bad, is opened and the prosecutor is at liberty to tender evidence of general bad character. See AR 143(3).
  - (ii) In cases where guilty knowledge or intention or design is of the essence of the offence, proof may be given that the accused did other acts similar to those which form the basis of the charge; such evidence is admissible not to show that because he has committed one offence, he would, therefore, be likely to commit another offence of the same nature but to prove intention, knowledge, good faith etc., of the accused with regard to the act or to rebut (even by anticipation) the defence of accident, mistake etc, and to show that the offence charged formed part of a series of similar occurrence IEA.ss. 14 and 15.

**145. Lunacy of accused.**—(1) Whenever, in the course of a trial by a court-martial, it appears to the court that the person charged is by reason of unsoundness of mind incapable of making his defence, or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or knowing that it was wrong or contrary to law, the court shall record a finding accordingly.

(2) The presiding officer of the court, or, in the case of a summary court-martial the officer holding the trial, shall forthwith report the case to the confirming officer, or to the authority empowered to deal with its finding under section 162, as the case may be.

(3) The confirming officer to whom the case is reported under sub-section (2) may, if he does not confirm the finding, take steps to have the accused person tried by the same or another court-martial for the offence with which he was charged.

(4) The authority to whom the finding of a summary court-martial is reported under sub-section (2), and a confirming officer confirming a finding in any case so reported to him shall order the accused person to be kept in custody in the prescribed manner and shall report the case for the orders of the Central Government.

(5) On receipt of a report under sub-section (4) the Central Government may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

#### NOTES

1. As to insanity in connection with responsibility for crime, see IPC.s. 84, which lays down the legal test of responsibility in cases of alleged unsoundness of mind.

2. It is to be observed that two distinct cases are contemplated. A person may have been sane at the time when he did act or made the omission charged, but may not be sane enough to make his defence; while on the other hand, a person insane at the time when he did the act or made the omission charged may have recovered sufficiently to take his trial.

In the case of a court-martial whose finding requires confirmation, confirmation is required in both the cases mentioned above.

3. An application that the accused is of unsound mind and consequently incapable of making his defence should be made before arraignment. The application will normally be made by counsel for the defence or the defending officer, but should, if necessary, be made by the prosecutor. Evidence in support of the application may of course, be given.

4. Where a court-martial finds that an accused person committed the act (or made the omission) alleged as constituting the offence (or offences) specified in the charge or charges but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, such finding does not amount to a conviction, but means that on the facts proved the court would have found him, guilty of the offence (offences) had it not been established to its satisfaction that the accused at the time was not responsible for his actions.

If such a finding is recorded, no pay and allowances are forfeited automatically under AA.ss. 90 and 91 and P and A Regs, e.g. in respect of the period during which the accused is in custody awaiting trial.

5. *Prescribed manner.*— Sec AR 199(3). The authority/officer mentioned in sub-sec (4) should then forward the proceedings to Army HQ.

6. *Sub-sec (5).*—Other suitable place. In view of the provisions of Cr.P.C. 1973, s. 337, the place of safe custody must, if it is not a lunatic asylum, be a jail.

**146. Subsequent fitness of lunatic accused for trial.**—Where any accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention under section 145, the officer commanding the army, army corps, division or brigade within the area of whose command the accused is in custody or is detained, or any other officer prescribed in this behalf, may—

- (a) if such person is in custody under sub-section (4) of section 145, on the report of a medical officer that he is capable of making his defence, or

- (b) if such person is detained in a jail under sub-section (5) of section 145, on a certificate of the Inspector General of Prisons, and if such person is detained in a lunatic asylum under the said sub-section on a certificate of any two or more of the visitors of such asylum that he is capable of making his defence,

take steps to have such person tried by the same or another court-martial for the offence with which he was originally charged or, if the offence is a civil offence, by a criminal court.

#### NOTE

Prescribed officer: See AR 199(1) and (2).

**147. Transmission to Central Government of orders under section 146.**—A copy of every order made by an officer under section 146 for the trial of the accused shall forthwith be sent to the Central Government.

**148. Release of lunatic accused.**—Where any person is in custody under sub-section (4) of section 145 or under detention under sub-section (5) of that section—

- (a) if such person is in custody under the said sub-section (4), on the report of a medical officer, or
- (b) if such person is detained under the said sub-section (5), on a certificate from any of the authorities mentioned in clause (b) of section 146 that in the judgment of such officer or authority such person may be released without danger of his doing injury to himself or to any other person, the Central Government may order that such person be released or detained in custody, or transferred to a public lunatic asylum if he has not already been sent to such an asylum.

**149. Delivery of lunatic accused to relatives.**—Where any relative or friend of any person who is in custody under sub-section (4) of section 145 or under detention under sub-section (5) of that section desires that he should be delivered to his care and custody, the Central Government may upon application by such relative or friend and on his giving security to the satisfaction of that Government that the person delivered shall be properly taken care of and prevented from doing injury to himself or any other person, and be produced for the inspection of such officer, and at such times and places, as the Central Government may direct, order such person to be delivered to such relative or friend.

**150. Order for custody and disposal of property pending trial.**—When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a court-martial during a trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial, and if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

**151. Order for disposal of property regarding which offence is committed.**—(1) After the conclusion of a trial before any court-martial, the court or the officer confirming the finding or sentence of such court-martial, or any authority superior to such officer, or, in the case of court-martial whose finding or sentence does not require confirmation, the officer commanding the army, army corps, division or brigade within which the trial was held, may make such order as it or he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof, or otherwise, of any property or document produced before the court or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) Where any order has been made under sub-section (1) in respect of property regarding which an offence appears to have been committed, a copy of such order signed and certified by the authority making the same may, whether the trial was held within India or not, be sent to a magistrate within whose jurisdiction such property for the time being is situated, and such magistrate shall thereupon cause the order to be carried into effect as if it were an order passed by him under the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) <sup>1</sup> or any corresponding law in force in (the State of Jammu and Kashmir)<sup>2</sup>.

(3) In this section the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

#### NOTES

1. Theft or misappropriation of property does not alter the ownership, and therefore, *prima facie* the person from whom property has been stolen or misappropriated is the lawful owner of it, and can recover it from the holder.

2. Where stolen property has not been recovered, the value of the property should be stated in the particulars of the charge and proved in evidence. Stoppages may then be awarded to recoup the owner; AR 30(6). In a case of theft followed by sale to an innocent purchaser, stoppages may be awarded to recoup the purchaser on a charge of theft, provided that charge contains an additional averment informing the accused of the further liability he has incurred in respect of the innocent purchaser.

**152. Powers of court-martial in relation to proceedings under this Act.**—Any trial by a court-martial under the provisions of this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860), and the court-martial shall be deemed to be a court within the meaning of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974). <sup>1</sup>

#### NOTES

1. See note 3 to AA.s. 59 and notes to AR 150.

2. This section indicates that summary proceedings under AA.s. 80, 83, 84 or 85 are not deemed to be ‘judicial proceedings’ nor is the officer disposing of the case summarily under those sections a ‘court’ within the meaning of the Cr. PC.

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<sup>1</sup> Substituted by Act No. 37 of 1992.

<sup>2</sup> Substituted by the Adaption of Laws (No.3) Order, 1956.

## CHAPTER XII

## CONFIRMATION AND REVISION

**153. Finding and sentence not valid, unless confirmed.**—No finding or sentence of a general, district or summary general court-martial shall be valid except so far as it may be confirmed as provided by this Act.

## NOTES

1. (a) For details as regards the authorities/officers empowered to confirm findings and sentences of courts-martial see AA.ss. 154 to 157 and notes thereto.

(b) The finding(s) and sentence of a SCM do not require confirmation: AA.s. 161.

2. (a) Confirmation is complete when the proceedings are promulgated. (See AR 71). At any time before promulgation the confirming authority may cancel his minute of confirmation and revoke the minute or order a revision. If proceedings are confirmed in error by an officer not having power to confirm, his act and the subsequent promulgation are null, and it is open to the proper authority to confirm.

(b) A CO who has investigated the case cannot subsequently confirm the proceedings of a court-martial arising out of the same matter. Regs Army para 472.

(c) Similarly a member of a court-martial or an officer who has acted as prosecutor cannot confirm the proceedings of that court-martial. AR 74.

3. (a) The result of this section is that if a finding of 'guilty' or 'not guilty' is not confirmed it is invalid; consequently there is no conviction or acquittal, and the accused has not been convicted or acquitted by a court-martial for the purpose either of any subsequent trial or of any entry in regimental books or of any forfeiture. See AR 149 as to merely technical errors not involving injustice to the accused.

(b) Confirmation of the sentence alone implies confirmation of the finding also, but is not the correct mode of recording confirmation.

4. Confirmation ought to be withheld in the following cases :—

- (a) Where the provisions of AA relating to jurisdiction have been contravened. See AA.ss. 109 to 115, 118 and 119 and 128 to 132.
- (b) Where evidence of a nature prejudicial to the accused has been wrongly admitted.
- (c) Where the accused has been unduly restricted in his defence.
- (d) Where a finding of 'guilty' has been come to with the exception of certain words of the charge, and these words so far describe the essence of the offence, that the finding with the words omitted fails to disclose an offence of which the court could legally have convicted.
- (e) Where a special finding of 'guilty' fails to disclose an offence of which the court could have legally convicted.
- (f) Where the charge is bad in law, even though the accused has pleaded guilty.
- (g) Where there has been such a deviation from the ARs that injustice has been done to the accused.

5. A confirming officer cannot substitute special finding on any charge for the court's finding; he can only confirm, reserve confirmation for superior authority, send back for revision, or refuse to confirm.

**154. Power to confirm finding and sentence of general court-martial.**—The findings and sentences of general courts-martial may be confirmed by the Central Government, or by any officer empowered in this behalf by warrant of the Central Government.

## NOTES

1. A-2 warrant is at present issued by the Central Government to the COAS; and A-3 warrants are issued by the said Central Govt. to GOC-in-C commands, GOsC corps, division/area and Commanders Independent brigade/sub-area and to officers exercising such powers under AA.s. 8.

2. For forms of warrant, see Part IV of the Manual.

3. See notes to AA.s. 153 and notes 2 and 3(a) to AA.s. 109.

**155. Power to confirm finding and sentence of district court-martial.**—The findings and sentences of district courts-martial may be confirmed by any officer having power to convene a general court-martial or by any officer empowered in this behalf by warrant of such officer.

## NOTES

1. For forms of warrant see Part IV of the Manual. B-2 Warrants, which also empower the holders to convene DCsM, are at present issued to brigade/sub area commanders and officers exercising the power of a brigade etc., commander under AA.s. 8 by the GOC-in-C commands, or GOC corps, division/area.

2. An officer having power to convene a GCM at a port of embarkation can issue his warrant to the officer commanding the troops on board a ship empowering the latter to confirm during the period of the voyage the findings and sentences of DCM held on board the ship.

3. See notes to AA.s. 153 and notes 2, 3(a) and (4) to AA.s. 109.

**156. Limitation of powers of confirming authority.**—A warrant issued under section 154 or section 155 may contain such restrictions, reservations or conditions as the authority issuing it may think fit.

## NOTES

1. As to restrictions, etc., see forms of warrants (part IV). For instance, a sentence of death must be reserved for confirmation by the Central Government.

2. See Regs Army para 472.

**157. Power to confirm finding and sentence of summary general court-martial.**—The findings and sentences of summary general courts-martial may be confirmed by the convening officer or if he so directs, by an authority superior to him.

## NOTES

1. In the case of a SGCM, the convening officer can confirm the finding and sentence thereof, if he so desires.

2. A member of a SGCM or an officer who has acted as prosecutor thereat should not, so far as practicable, confirm the proceedings of that court-martial; see ARs 164 and 74.

**158. Power of confirming authority to mitigate, remit or commute sentences.**—  
(1) Subject to such restrictions, reservations or conditions, as may be contained in any warrant issued under section 154 or section 155 and to the provisions of sub-section (2), a confirming authority may, when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any punishment or punishments lower in the scale laid down in section 71.

(2) [Repealed]<sup>1</sup>

## NOTES

1. As to mitigation of sentence for offences in several charges, where the finding on one or more of them is not confirmed, see AR 72; and as to the power of the confirming officer to vary a sentence informally expressed or in excess of the punishment authorized by law, see AR 73.

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<sup>1</sup>See IPC.s. 53A.



2. The powers conferred by this section may be exercised by the confirming officer, as such, only when confirming the sentence. After promulgation, when the confirmation is complete the power of the confirming officer in that capacity ceases and the above powers can only be exercised by one of the authorities mentioned in AA.s. 179.

3. A confirming officer may also, under AA.s. 183 direct that an offender sentenced to imprisonment for life or imprisonment be not committed until the orders of the authority / officer specified in AA.s. 182 are obtained. If himself an authority under AA.s. 182 he has further powers as such under that section.

4. '*Mitigation*' is awarding a less amount of the same species of punishment, as, for example, by reducing the length of imprisonment to which an offender has been sentenced; and is in effect equivalent to a remission of part of the sentence. The power to mitigate etc., cannot be exercised whilst execution of the sentence is suspended.

5. '*Remission*' may be remission of the whole or of part of the sentence; thus a sentence of imprisonment may be remitted altogether, or a portion of the term may be remitted.

A confirming officer cannot remit such forfeiture of pay and allowances, as follow automatically (under AA.s.s. 90 and 91 and P and A Regs) upon the finding of the court.

6. (a) '*Commutation*' is changing the description of punishment by awarding a punishment lower in the scale of punishments in AA.s. 71, as imprisonment in lieu of imprisonment for life, or dismissal in lieu of cashiering, or forfeiture of seniority in lieu of reduction in rank.

(b) '*Other punishments*.—There is no standard of comparison between one punishment and two or more other punishments, and as it is necessary that the commuted sentence should be less than the original sentence, commutation of one punishment to two or more punishments is only permissible where it is obvious that the two are together less severe than the one e.g., death commuted to cashiering and imprisonment for life or dismissal to forfeiture of seniority and severe reprimand. Partial commutation of any one punishment by the substitution for a portion thereof of another punishment is illegal; thus where in a case of "losing by neglect" a court passed a sentence of imprisonment, but omitted to pass a sentence of stoppages of pay which would have been valid, a portion of the imprisonment cannot be commuted to stoppages.

(c) If a confirming officer purports (by way of commutation) to substitute for a valid sentence a sentence which the court had no power to award, neither the original sentence—since it has been commuted—nor the new sentence—since it is illegal—can stand. That conviction, however, remains good.

7. Where a term of imprisonment is reduced in length by remission or mitigation, automatic forfeiture of pay under AA.s. 91 and P&A Regs is governed by the term actually undergone—not by that originally imposed. So, too, pay and allowances are not automatically forfeited, whilst a sentence is suspended.

**159. Confirming of findings and sentences on board a ship.**—When any person subject to this Act is tried and sentenced by a court-martial while on board a ship, the finding and sentence so far as not confirmed and executed on board the ship, may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

#### NOTES

1. On active service the officer commanding the troops on board a ship can convene a SGCM on board under clause (c) of AA.s. 112.

2. See also notes to AA.ss. 110 and 155.

**160. Revision of finding or sentence.**—(1) Any finding or sentence of a court-martial which requires confirmation may be once revised by order of the confirming authority and on such revision, the court, if so directed by the confirming authority, may take additional evidence.

(2) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided that, if a general court-martial, it still consists of five officers, or, if a summary general or district court-martial, of three officers.

## NOTES

1. See notes to AR 68.
2. 'Which requires confirmation'—The finding or sentence of a SCM can, therefore, never be revised.

**161. Finding and sentence of a summary court-martial.**—(1) Save as otherwise provided in sub-section (2), the finding and sentence of a summary court-martial shall not require to be confirmed, but may be carried out forthwith.

(2) If the officer holding the trial is of less than five years service, he shall not, except on active service, carry into effect any sentence until it has received the approval of an officer commanding not less than a brigade.

## NOTES

1. '*Carried out forthwith*'—The officer holding the trial when passing sentence may, if a sentence of imprisonment be awarded, direct under the provisions of AA.s. 183(2) that the offender be not committed until the orders of the authority/officer specified in AA.s. 182 are obtained. See notes to AA.s. 183.
2. See AR 132 and notes thereto.

**162. Transmission of proceedings of summary court-martial**—The proceedings of every summary court-martial shall without delay be forwarded to the officer commanding the division or brigade within which the trial was held, or to the prescribed officer; and such officer, or the (Chief of the Army Staff)<sup>1</sup>, or any officer empowered in this behalf by the (Chief of the Army Staff)<sup>1</sup>, may, for reasons based on the merits of the case, but not any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the court might have passed.

## NOTES

1. '*Division or Brigade*': also area and sub area. See table under SRO 135-A dated 22 Jul 1950 (Part IV).
2. Prescribed Officer.—See AR 200.
3. The proceedings of a SCM cannot be sent back for revision and do not require confirmation, and any sentence passed by the court should, except as provided in AA.ss 161(2), 182 and 183 and AR 132, be put into execution forthwith.
4. Under this section and AR 133, the proceedings must be forwarded for review to the reviewing authority (through the DJAG of the Command in which the trial is held), who, if he considers that justice has been done, should countersign the proceedings and return them to the accused's corps for preservation. (AR 146). If a direction under AA.s. 182 has been passed, he should issue his orders thereon, or, if not himself the authority/officer specified in AA.s. 182, forward the proceedings to such an authority/officer for orders. The reviewing authority can, for reasons based on the 'merit of the case' but not on merely technical grounds (as to which, see note to AR 133), set aside the proceedings or mitigate, remit or commute the sentence. If the sentence is illegal, he must set it aside, or under AA.s. 163 a valid sentence may be substituted by one of the authorities mentioned in AA.s. 179.
5. A sentence of imprisonment for three months or less unaccompanied by dismissal should normally be undergone in military custody. See AA.s. 169 and notes thereto. A reviewing authority may direct that such a sentence should be undergone in military custody, either when reducing a sentence of imprisonment to three months or less or when the court omits to add such a direction to the sentence. But in the former case if the accused is sent to a civil jail, his consent for being reinstated in the service after the expiration of the sentence is necessary in view of the provisions of AR 168.
6. As to the scale for punishments awardable by SCsM see Regs Army para 448.

**163. Alteration of finding or sentence in certain cases.**—(1) Where a finding of guilty by a court-martial, which has been confirmed, or which does not require confirmation, is found for any reason to be invalid or cannot be supported by the evidence, the authority

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<sup>1</sup> Substituted by Act No. 19 of 1955.

which would have had power under section 179 to commute the punishment awarded by the sentence, if the finding had been valid, may substitute a new finding and pass a sentence for the offence specified or involved in such finding:

Provided that no such substitution shall be made unless such finding could have been validly made by the court-martial on the charge and unless it appears that the court-martial must have been satisfied of the facts establishing the said offence.

(2) Where a sentence passed by a court-martial which has been confirmed, or which does not require confirmation, not being a sentence passed in pursuance of a new finding substituted under sub-section (1), is found for any reason to be invalid, the authority referred to in sub-section (1) may pass a valid sentence.

(3) The punishment awarded by a sentence passed under sub-section (1) or sub-section (2) shall not be higher in the scale of punishments than, or in excess of the punishment awarded by, the sentence for which a new sentence is substituted under this section.

(4) Any finding substituted, or any sentence passed, under this section shall, for the purposes of this Act and the rules made thereunder, have effect as if it were a finding or sentence, as the case may be, of a court-martial.

#### NOTES

1. *Sub-sec (1).*—(a) This sub-sec enables any of the authorities mentioned in AA.s. 179 to substitute a new finding for an invalid finding or for one which cannot be supported by the evidence, which have been confirmed and which are thus not open to revision and to pass a sentence in respect of the new finding. It also gives these authorities similar powers in regard to a finding not requiring confirmation, i.e., any finding of a SCM.

(b) The confirming officer himself has no power to substitute or change the finding; if in his opinion the court has arrived at a wrong finding, he can only send it back for revision or not to confirm it.

(c) The procedure does not apply where the charge is bad in law or where the charge offends AA.s. 122.

2. *Sub-sec (2).*—It similarly enables the said authorities to substitute a valid sentence for an invalid sentence not being a sentence passed in pursuance of a new finding under sub-sec (1).

3. *Sub-sec (3).*—(a) This sub-sec requires that the new sentence substituted for an invalid sentence must not be higher in scale than, or in excess of, the original sentence. The words ‘invalid sentence’ are used to mean a sentence which is authorised under AA but which is inapplicable in relation to the accused or to the offence with which he is charged, as distinct from an illegal sentence or a sentence which is unknown to the said Act e.g., reproof. In case a sentence which is not specified in the scale of punishments in AA.s. 71, is awarded by a court-martial, it is not feasible for the authority specified in sub-sec (1), to say that any sentence which such authority may propose to substitute for the sentence of the court is not “higher” in the scale of punishments. In such cases, action under this section for the substitution of the sentence is not permitted and the accused will receive no punishment though the conviction will stand.

4. The substituted finding and/or sentence has the same effect as if it were the original finding and/or sentence.

5. As to mitigation of sentence after confirmation, see AA.s. 179 and AR 72(2).

**164. Remedy against order, finding or sentence of court-martial.**—(1) Any person subject to this Act who considers himself aggrieved by any order passed by any court-martial may present a petition to the officer or authority empowered to confirm any finding or sentence of such court-martial, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any court-martial which has been confirmed, may present a petition to the

Central Government, the (Chief of the Army Staff)<sup>1</sup> or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, the (Chief of the Army Staff)<sup>1</sup> or other officer, as the case may be, may pass such order thereon as it or he thinks fit.

#### NOTES

1. See Regs Army para 365.

2. Prescribed officer: see AR 201.

3. (a) A person subject to AA who considers himself aggrieved by any order, finding or sentence of a court-martial has a right, under this section, to submit a petition against such order, finding or sentence. The officers or authorities to whom such petitions may be addressed are as follows :

- (i) Before confirmation—the officer or authority empowered to confirm the finding and sentence of that court-martial.
- (ii) After confirmation—the Central Government, the COAS or any authority superior in command to the confirming authority.
- (iii) Trial by SCM—an officer superior in command to the officer who held the SCM provided he has power not less than a brigade commander (AR 201).

(b) Petitions by persons still in service will be addressed to any of the authorities mentioned in note 3(a) above through the confirming or reviewing authority, as the case may be. Unless the redress asked for is granted by a subordinate authority, the petition will be forwarded to the addressee with the remarks of all the intermediate commanders concerned.

(c) A person, who addressed a petition to the confirming officer before confirmation, will have the right to address another petition to any of the authorities mentioned in note 3(a) (ii), above.

(d) A petition can only be addressed by an aggrieved person either personally or through a representative appointed by a power of attorney. A petition received from a person, other than the aggrieved one, or his duly constituted attorney, or a petition from an aggrieved person which has already been finally disposed of will be returned to the petitioner explaining the correct legal position to him.

(e) The orders of the officer or authority to whom the petition is addressed will be final and will exhaust the legal rights of redress under AA but see note 3(c) above. Such orders will be attached to the proceedings, if the proceedings have been called for, or will be forwarded to the JAG, Army Headquarters, for attachment to the proceedings.

4. The types of reliefs that can be granted and the authorities empowered to grant them are set out in AA.s. 179.

**165. Annulment of proceedings.**—The Central Government, the (Chief of the Army Staff)<sup>1</sup> or any prescribed officer may annul the proceedings of any court-martial on the ground that they are illegal or unjust.

#### NOTES

1. Prescribed officer. See AR 202.

2. Before passing orders under this section the authorities specified in the section should invariably obtain the advice of the DJAG of the Command concerned. See Regs for the Army para 365(k).

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<sup>1</sup> Substituted by Act No. 19 of 1955.

## CHAPTER XIII

### EXECUTION OF SENTENCES

**166. Form of sentence of death.**—In awarding a sentence of death, a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death.

#### NOTES

1. A person sentenced by a court-martial to death remains subject to AA until the sentence is carried out; AA.s. 123(4).

2. See also AA.s. 132(2) and (3) and notes thereto.

3. For forms of warrants see ARs 169 to 171 and Appx V to AR.

**167. Commencement of sentence of (imprisonment for life)<sup>1</sup> or imprisonment.**—Whenever any person is sentenced by a court-martial under this Act to (imprisonment for life)<sup>1</sup> or imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the presiding officer or, in the case of a summary court-martial by the court.

#### NOTES

1. (a) Under this section, a term of imprisonment for life or imprisonment cannot be made to commence at the expiration of a previous term, but must commence on the day on which the original proceedings are signed. If, therefore, the court desires to inflict, e.g., six months' additional imprisonment on a prisoner already undergoing six months' imprisonment, of which three months are unexpired, the court must award nine months.

(b) A term of imprisonment for life or imprisonment awarded by way of commutation must commence on the date of the signing of original proceedings even though such sentence was one of a different character.

(c) The suspension of a sentence of imprisonment for life or imprisonment has no effect on its currency. See AA.s. 185.

2. Original proceedings were signed.—Means the day on which the first verdict and sentence, if any, was announced. For example, on his trial by a court-martial, 'A' was found not guilty on 15 May 78. On revision, on 15 Jun 78, he was convicted and awarded 3 months RI. The term of his sentence shall reckon to commence w.e.f. 15 May 78. It is, therefore, essential that the proceedings be dated as well as signed. When, however, a presiding officer or officer holding the trial omits either to sign or date the proceedings, he can even after confirmation sign them and date his signature as of the true date.

3. For framing sentences of imprisonment see Regs for the Army para 468(e) and note 8(g) to AA.s. 71.

4. For forms of warrants see Part II of Appendix IV to AR.

**168. Execution of sentence of (imprisonment for life)<sup>1</sup>.**—Whenever, any sentence of (imprisonment for life)<sup>1</sup> is passed under this Act or whenever, any sentence of death is commuted to (imprisonment for life)<sup>1</sup>, the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

#### NOTES

1. "Passed".—A sentence requiring confirmation (see AA.s. 153) is inoperative until confirmed; action in respect of such a sentence cannot, therefore, be taken under this section before confirmation. Until promulgation has been effected, confirmation is not complete (see AR 71).

2. *Prescribed Officer.*—See AR 166.

3. *Civil prison.*—A prison maintained under the prisons Act, 1894 (IX of 1894). AA.s. 3 (iii).

4. For forms of warrants, see Part II of Appendix IV to AR.

When a death sentence is commuted by the confirming officer to imprisonment for life or imprisonment, Forms J and K in Appendix V to AR will be used.

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<sup>1</sup> See IPC.s. 53A.

**169. Execution of sentence of imprisonment.**—(1) Whenever any sentence of imprisonment is passed under this Act by a court-martial or whenever any sentence of death or (imprisonment for life)<sup>1</sup> is commuted to imprisonment, the confirming officer or in case of a summary court-martial the officer holding the court or such other officer as may be prescribed, shall, save as otherwise provided in sub-sections (3) and (4), direct either that the sentence shall be carried out by confinement in a military prison or that it shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub-section (1), the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a court-martial, the appropriate officer under sub-section (1) may direct that the sentence shall be carried out by confinement in military custody instead of in a civil or military prison.

(4) On active service, a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may from time to time appoint.

#### NOTES

1. See notes 1, 3 and 4 to AA.s. 168.

2. Sub-sec (1).—Prescribed officer: see AR 203.

3. Sentence of imprisonment combined with dismissal should, as a rule, be carried out by confinement in a civil prison. Sentences of imprisonment not exceeding three months, to which no sentence of dismissal has been added, should be carried out by confinement in military custody, or, if sufficient accommodation in cells does not exist, in a military prison. Where an offender has been sentenced to imprisonment exceeding three months (but not exceeding nine months) and circumstances exist which justify the return of the offender to military service, the competent authority should give a direction that he should be committed to a military prison.

4. When the power of directing imprisonment to be undergone in military custody or a military prison vests in the confirming officer, the direction should be part of the confirmation minute, but when, as in the case of a SCM, it vests in the court, the direction should form part of the sentence. The direction may also be given by an authority having power, under AA.s. 162 or AA.s. 179, to mitigate the sentence.

5. Sub-sec (2).—*Prescribed officer*.—see AR 166.

*Forms of warrants*.—See Forms B, C and F in Part II of Appendix IV to AR.

6. See notes 3 and 4 above.

7. *Sub-sec(4)*.—The officer commanding the forces in the field on active service can establish military prisons in the field in which sentences of imprisonment of any length may be carried out. This enables a sentence of imprisonment to be carried out locally on active service and the prisoner, unless he is dismissed, to be sent back to duty on its expiration. The officer commanding the forces in the field can also appoint a local civil prison as a place in which such sentences may be carried out, if he considers the civil prison to be a suitable place and accommodation is available. Such civil prison not being a 'civil prison' within the meaning of AA.s. 3(iii), the offender's subjection to AA would not cease under AR 168 (3).

**[169A. Period of custody undergone by the officer or person to be set off against the imprisonment.**—When a person or officer subject to this Act is sentenced by a court-martial to a term of imprisonment, not being an imprisonment in default of payment of fine, the period spent by him in civil or military custody during investigation, inquiry or trial of the same case, and before the date of order of such sentence, shall be set off against the term of imprisonment imposed upon him, and the liability of such person or officer to undergo imprisonment on such order of sentence shall be restricted to the remainder, if any, of the term of imprisonment imposed upon him]<sup>2</sup>.

<sup>1</sup>See IPC.s. 53A.

<sup>2</sup>Inserted by Act No. 37 of 1992.



**170. Temporary custody of offender.**—Where a sentence of (imprisonment for life)<sup>1</sup> or imprisonment is directed to be undergone in a civil prison, the offender may be kept in a military custody or in any other fit place, till such time as it is possible to send him to a civil prison.

#### NOTE

Under this section, which deals with interim custody, a prisoner can be kept in any fit place until the prisoner reaches the civil prison (AA.s. 3(iii)) where he is to undergo his sentence.

**171. Execution of sentence of imprisonment in special cases.**—Whenever, in the opinion of an officer commanding an army, army corps, division or independent brigade, any sentence or portion of a sentence of imprisonment cannot for special reasons, conveniently be carried out in a military prison or in military custody in accordance with the provisions of section 169, such officer may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place.

#### NOTES

1. '*Army, Army corps, division*': —See SRO 135A dated 22 Jul 50. [Part (IV)].

2. The power conferred in this section might be of use in an emergency, such as an epidemic. It will also admit of local arrangements being made for the execution of a sentence of rigorous imprisonment passed in any place outside India when it is, for any reason, inconvenient or undesirable that an offender should be sent to India to undergo his sentence.

In such a case, the warrant of commitment in Form B (see Part II of Appendix IV to AR) must be suitably varied (see AR 4) and must cite the order made under this section. When the prisoner is to be despatched to India he should be demanded by a warrant in Form G in the said Appendix and must be committed to the civil prison in India on a fresh warrant of commitment.

3. This section differs from AA.s. 169(4) in that (a) the direction may be made by the specified authorities even though the troops are not on active service and (b) the direction can be made only when the imprisonment is to be carried out in a military prison or military custody.

**172. Conveyance of prisoner from place to place.**—A person under sentence of (imprisonment for life)<sup>1</sup> or imprisonment may during his conveyance from place to place, or when on board ship, aircraft, or otherwise, be subjected to such restraint as is necessary for his safe conduct and removal.

**173. Communications of certain orders to prison officers.**—Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil or military prison, a warrant in accordance with such order shall be forwarded by the officer making the order or his staff officer or such other person as may be prescribed to the officer in charge of the prison in which such person is confined.

#### NOTES

1. For form of warrants under this section, see Forms D to G in Part II of Appendix IV to the AR. The heading of each of these shows clearly the cases in which it is to be used. It will be noticed that Form D is applicable to cases in which the person concerned is to be released, Form E to those in which he remains in a civil prison and Form F to those in which he remains in a civil or military prison but with a reduced sentence, and Form G to those in which he is to be transferred to military custody, *i.e.*, to cases in which his sentence, in its new form, admits of or requires such custody. When a death sentence is commuted, subsequent to confirmation, to one of imprisonment for life or imprisonment, Form J or K in Appendix V to AR with the necessary variations, will be used. See AR 4.

2. The order, after promulgation, should be sent to the JAG AHQ, for attachment to the court-martial proceedings.

3. Prescribed officer see AR 167.

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<sup>1</sup>See IPC.s. 53A.

**174. Execution of sentence of fine.**—When a sentence of fine is imposed by a court-martial under section 69 whether the trial was held within India or not, a copy of such sentence, signed and certified by the confirming officer, or where no confirmation is required, by the officer holding the trial may be sent to any magistrate in India, and such magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the [Code of Criminal Procedure, 1973]<sup>1</sup>, or any corresponding law in force in (the State of Jammu and Kashmir)<sup>2</sup> for the levy of fines as if it were a sentence of fine imposed by such magistrate.

**NOTE**

This provision should be used when the fine imposed by sentence of a court-martial is not recoverable under AA.s. 90(f) or 91(h).

**175. Establishment and regulation of military prisons.**—The Central Government may set apart any building or part of a building, or any place under its control, as a military prison for the confinement of persons sentenced to imprisonment under this Act.

**176. Informality or error in the order or warrant.**—Whenever any person is sentenced to (imprisonment for life)<sup>3</sup> or imprisonment under this Act, and is undergoing the sentence in any place or manner in which he might be confined under a lawful order or warrant in pursuance of this Act, the confinement of such person shall not be deemed to be illegal only by reason of any informality or error in or as respects the order, warrant or other document, or the authority by which, or in pursuance whereof such person was brought into or is confined in any such place, and any such order, warrant or document may be amended accordingly.

**177. Power to make rules in respect of prisons and prisoners.**—The Central Government may make rules providing—

- (a) for the government, management and regulation of military prisons;
- (b) for the appointment, removal and powers of inspectors, visitors, governors and officers thereof;
- (c) for the labour of prisoners undergoing confinement therein, and for enabling persons to earn, by special industry and good conduct, a remission of a portion of their sentence;
- (d) for the safe custody of prisoners and the maintenance of discipline among them and the punishment, by personal correction, restraint or otherwise, of offences committed by prisoners;
- (e) for the application to military prisons of any of the provisions of the Prisons Act, 1894 (IX of 1894), relating to the duties of officers of prisons and the punishment of persons not being prisoners;
- (f) for the admission into any prison, at proper times and subject to proper restrictions, of persons with whom prisoners may desire to communicate, and for the consultation by prisoners under trial with their legal advisers without the presence as far as possible of any third party within hearing distance.

**178. Restriction of rule-making power in regard to corporal punishment.**—Rules made under section 177 shall not authorise corporal punishment to be inflicted for any offence, nor render the imprisonment more severe than it is under the law for the time being in force relating to civil prisons.

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<sup>1</sup>Substituted by Act No. 37 of 1992

<sup>2</sup>Substituted by the adaption of Laws (No. 3) Order 1956.

<sup>3</sup>See IPC.s. 53A.

## CHAPTER XIV

## PARDONS, REMISSIONS AND SUSPENSIONS

**179. Pardon and remission.**—When any person subject to this Act has been convicted by a court-martial of any offence, the Central Government or the (Chief of the Army Staff) <sup>1</sup> or, in the case of a sentence, which he could have confirmed or which did not require confirmation, the officer commanding the army, army corps, division or independent brigade in which such person at the time of conviction was serving or the prescribed officer may—

- (a) either with or without conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded; or
- (b) mitigate the punishment awarded; or
- (c) commute such punishment for any less punishment or punishments mentioned in this Act :

(Proviso omitted).<sup>2</sup>

- (d) either with or without conditions which the person sentenced accepts, release the person on parole.

## NOTES

1. As to mitigation, remission and commutation of sentences, see notes to AA.s. 158; as to substitution of a valid for an invalid sentence, see AA. s. 163; and as to mitigation of the sentence when the finding on one of several charges is found to be invalid, see AR 72(2).

2. *Prescribed officer.*— See AR 204.

3. Any order made under this section should, after promulgation, be sent to the JAG, Army HQ, for attachment to the court-martial proceedings.

4. The powers conferred by this section should not be exercised by an officer holding a command inferior to that of the authority confirming the sentence unless such officer is authorised by such confirming authority or an authority superior to the confirming authority to exercise such power. Similarly, the powers conferred by this section shall not be exercised by an officer mentioned therein if such officer holds a command inferior to that of the authority/officer who has already once taken action under this section, without reference to such latter authority/officer. Regs Army para 474.

5. (a) A sentence of dismissal might be remitted on the conditions that the person sentenced shall not receive pay in respect of or count service for any purpose during the period spent under dismissal. The conditions, if any, must be clearly stated and the written acceptance of the person obtained. Mitigation or commutation cannot be made conditional.

(b) A 'pardon' takes away the conviction, and when a pardon has been granted, the record of the conviction must be removed from the pardoned persons' conduct sheet and will not be provable against him should he be again tried by a court-martial and convicted of any offence.

(c) Release on parole with conditions has, like suspension, no effect on the finding but merely suspends the execution of the sentence. Unconditional release on parole is tantamount to remission of the unexpired portion of the sentence.

**180. Cancellation of conditional pardon, release on parole or remission.**—(1) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission,

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<sup>1</sup>Substituted by Act No. 19 of 1955

<sup>2</sup>See IPC.s. 53A.

not fulfilled, such authority may cancel the pardon, release or remission and thereupon the sentence of the court shall be carried into effect as if such pardon, release or remission had not been granted.

(2) A person whose sentence of (imprisonment for life)<sup>1</sup> or imprisonment is carried into effect under the provisions of sub-section (1) shall undergo only the unexpired portion of his sentence.

#### NOTES

1. 'Unexpired portion': This is the period of the sentence less the period the person was in custody in consequence of the sentence i.e., less the period from the effective date of sentence to date of release in consequence of the remission.

2. See note 3 to AA.s. 179.

**181. Reduction of warrant officer or non-commissioned officer.**—When under the provisions of section 77 a warrant officer or a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purpose of section 179, be treated as a punishment awarded by a sentence of a court-martial.

#### NOTES

1. The remission of the punishments mentioned in AA.s. 77 would not of itself avoid the reduction to the ranks consequent on the sentence. If it is desired to avoid such reduction to the ranks the reduction may, by reason of this section, be remitted as well.

2. A NCO sentenced by court-martial to imprisonment etc., is *ipso facto* reduced to the ranks, and the suspension of his sentence does not cancel or suspend the reduction. There is, however, no legal bar to a person receiving promotion or an appointment whilst under a suspended sentence.

3. See also note 3 to AA.s. 179.

**182. Suspension of sentence of (imprisonment for life)<sup>1</sup> or imprisonment.**—(1) Where a person subject to this Act is sentenced by a court-martial to (imprisonment for life)<sup>1</sup> or imprisonment, the Central Government, the (Chief of the Army Staff)<sup>2</sup> or any officer empowered to convene a general or a summary general court-martial may suspend the sentence whether or not the offender has already been committed to prison or to military custody.

(2) The authority or officer specified in sub-section (1) may in the case of an offender so sentenced direct that until the orders of such authority or officer have been obtained the offender shall not be committed to prison or to military custody.

(3) The powers conferred by sub-sections (1) and (2) may be exercised in the case of any such sentence which has been confirmed, reduced or commuted.

#### NOTES

1. AA.ss. 182 to 190, which deal with suspension of sentence only apply to sentences of imprisonment for life or imprisonment passed on persons subject to AA but from the word 'dismissal' in AA.s. 190(2) it appears that the Parliament intended to exclude officers from the purview of these sections.

2. The authority/officer specified in sub-sec (1) may in his discretion, issue a general direction that no person under his command sentenced to imprisonment for life or imprisonment is to be committed to prison or to military custody until his orders have been obtained. Sentence of imprisonment exceeding two years will, since only a GCM or SGCM can pass such a sentence, always require confirmation by an officer who will himself be one of the authorities specified in sub-sec (1).

3. The authority or officer under sub-sec (1) read with AA.s. 186 can at any time suspend a sentence, order it into execution and again suspend it etc., until the sentence expires even though the offender has ceased to be subject to AA under AR 168; see AA.s. 123(3).

4. An order putting a suspended sentence into execution must be signed by the competent authority under sub-sec (1); a minute of suspension may be signed by a staff officer "for" him, so long as it makes it clear that the competent authority/officer himself considered the case and arrived at the decision.

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<sup>1</sup>See IPC.s. 53A.

<sup>2</sup>Substituted by Act No. 19 of 1955

**183. Orders pending suspension.**—(1) Where the sentence referred to in section 182 is imposed by a court-martial other than a summary court-martial, the confirming officer may when confirming the sentence, direct that the offender be not committed to prison or to military custody until the orders of the authority or officer specified in section 182 have been obtained.

(2) Where a sentence of imprisonment is imposed by a summary court-martial the officer holding the trial or the officer authorised to approve of the sentence under sub-section (2) of section 161 may make the direction referred to in sub-section (1).

#### NOTES

1. The cases in which and by whom a direction under this section may be recorded are as under:—

- (a) by the authority/officer specified in AA.s. 182(1); see AA.s. 182(2)
- (b) by the confirming officer in the case of any sentence awarded by a DCM unless the confirming officer happens to be one of the authorities specified in AA.s. 182(1);
- (c) in the case of a SCM—
  - (i) the officer holding the trial; or
  - (ii) the officer authorised to approve the sentence under AA.s. 161(2).

2. It should be noted that the officer holding the trial can only so direct when passing sentence, the officer authorised to approve under AA.s. 161(2) when approving and the confirming officer, when confirming.

**184. Release on suspension.**—Where a sentence is suspended under section 182, the offender shall forthwith be released from custody.

#### NOTE

Suspension does not affect the finding or the continuity of the sentence but the offender is released from custody and if in service can carry on his duties.

**185. Computation of period of suspension.**—Any period during which the sentence is under suspension shall be reckoned as part of the term of such sentence.

#### NOTE

Suspension of a sentence does not affect its continuity. Under the provisions of AA.s. 167, a sentence of imprisonment for life or imprisonment, whether suspended or not, commences on the date on which the original proceedings of the court were signed and runs continuously until it expires.

**186. Order after suspension.**—The authority or officer specified in section 182 may, at any time while a sentence is suspended, order.—

- (a) that the offender be committed to undergo the unexpired portion of the sentence;  
or
- (b) that the sentence be remitted.

#### NOTES

1. If the authority/officer specified in AA.s. 187(1) considers at the periodical review that a sentence ought not to remain suspended, he will refer the case to the authority or officer specified in AA.s. 182(1) unless he is himself such authority etc., see notes to AA.s. 187. A suspended sentence may, however, be referred to the authority/officer mentioned in AA.s. 182(1) at any time with a view either to its remission or to the committal of offender to undergo the unexpired portion of the sentence.

2. This section does not contemplate the partial remission of a sentence; the only power of remission under clause (b) is to remit the whole; Partial remission must be effected (if at all) under AA.s. 179. See AA.s. 189.

3. When an offender is committed to prison to undergo the 'unexpired portion' of his sentence, the unexpired portion should be stated in the warrant. As to signing committal warrants, see AR 166. Also see AA.s. 185.

**187. Reconsideration of case after suspension.**—(1) Where a sentence has been suspended, the case may at any time, and shall at intervals of not more than four months, be reconsidered by the authority or officer specified in section 182, or by any general or other officer not below the rank of field officer duly authorised by the authority or officer specified in section 182.

(2) Where on such reconsideration by the officer so authorised, it appears to him that the conduct of the offender since his conviction has been such as to justify a remission of the sentence, he shall refer the matter to the authority or officer specified in section 182.

#### NOTES

1. See notes to AA.s. 186. Unless the authority referred to in sub-sec (1) is also one specified in AA.s. 182(1), the former can only—

- (a) keep a suspended sentence further suspended by ordering it to be brought forward for reconsideration on such and such a date not more than four months ahead; or
- (b) refer it to the authority/officer specified in AA.s. 182(1)—unless he is himself such authority—with a recommendation either that the offender be committed to undergo the unexpired portion of the sentence or that the sentence be remitted.

2. Failure to reconsider a suspended sentence at the proper date has no effect upon the sentence; it can be subsequently reconsidered, and a further suspension or a committal may then be ordered.

**188. Fresh sentence after suspension.**—Where an offender, while a sentence on him is suspended under this Act, is sentenced for any other offence, then—

- (a) if the further sentence is also suspended under this Act, the two sentences shall run concurrently;
- (b) if the further sentence is for period of three months or more and is not suspended under this Act, the offender shall also be committed to prison or military custody for the unexpired portion of the previous sentence, but both sentences shall run concurrently; and
- (c) if the further sentence is for a period of less than three months and is not suspended under this Act, the offender shall be so committed on that sentence only, and the previous sentence shall, subject to any order which may be passed under section 186 or section 187, continue to be suspended.

#### NOTES

I. *Clause (b).*—(a) Under this clause, the offender is committed to undergo the unexpired portion of the previous sentence from the date the further sentence is effective. An order by a competent military authority under AA.s. 182(1) is not required.

(b) Committal warrants must, in order to comply with the provisions of the Prisoners Act, 1900 (III of 1900), be forwarded to the authorities of the prison to which the offender is sent. It will generally be convenient to prepare separate warrants; in preparing the warrant in respect of the former sentence care must be taken to state the unexpired portion which the offender has to undergo.

2. *Clause (c).*—(a) If dismissal has been added to the further, unsuspended sentence and no order has been passed under AA.s. 169, that the imprisonment is to be undergone in military custody, the offender should not be committed to a civil prison until the competent authority under AA.s. 182(1) has had an opportunity to order the unexpired portion of the former sentence into execution.

(b) As to preparation of committal warrants; see note I(b) above.

**189. Scope of power of suspension.**—The powers conferred by sections 182 and 186 shall be in addition to and not in derogation of the power of mitigation, remission, and commutation.



## NOTE

The authority or officer referred to in AA.s. 182(1) can also in addition exercise the powers of mitigation, remission and commutation under AA.s. 179 provided such authority is also one of the authorities specified in the latter section.

**190. Effects of suspension and remission on dismissal.**—(1) Where in addition to any other sentence, the punishment of dismissal has been awarded by a court-martial, and such other sentence is suspended under section 182, then, such dismissal shall not take effect until so ordered by the authority or officer specified in section 182.

(2) If such other sentence is remitted under section 186, the punishment of dismissal shall also be remitted.

## NOTES

1. *Sub-sec (1).*—In the case of a sentence of dismissal combined with imprisonment for life or imprisonment which is suspended, the dismissal does not take effect until so ordered by the competent authority under AA.s. 182(1). This is so even if the sentence is subsequently ordered into execution by the competent authority or is automatically put into execution under clause (b) of AA.s. 188. A competent authority who orders into execution a sentence of imprisonment for life or of imprisonment other than imprisonment to be undergone in a military prison or military custody should, if dismissal has been added to such sentence, as a rule, order the dismissal to take effect when the offender is received into a civil prison. If the dismissal accompanies a sentence of imprisonment for life or imprisonment which is not suspended, it takes effect as provided in AR 168, that is, when the sentence is one of imprisonment for life or of imprisonment which has to be undergone in a civil prison it takes effect immediately on the offender being received into such a prison and he therefore, ceases to be subject to the Act. In such a case, therefore, the dismissal must be remitted before the sentence of imprisonment for life or imprisonment can be suspended. In this connection see notes to AA.s. 188.

2. *Sub-sec (2).*—The effect of this sub-sec is that whenever dismissal has been added to a sentence of imprisonment for life or imprisonment and such sentence is remitted under AA.s. 186, the dismissal is also automatically remitted. The remission of a sentence of imprisonment for life or imprisonment under AA.s. 179 does not operate so as to remit a sentence of dismissal, which accompanied such sentence. If a suspended sentence to which dismissal has been added runs out whilst still under suspension, the dismissal should as a rule, be formally remitted under AA.s. 179 by one of the authorities/officers empowered under that section to do so as this sub-sec does not automatically remit such dismissal.

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## CHAPTER XV

## RULES

**191. Power to make rules.**—(1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the power conferred by sub-section (1), the rules made thereunder may provide for—

- (a) the removal, retirement, release, or discharge from the service of persons subject to this Act;
- (b) the amount and incidence of fines to be imposed under section 89;
- (c) [ ]<sup>1</sup>
- (d) the assembly and procedure of courts of inquiry, the recording of summaries of evidence and the administration of oaths or affirmations by such courts;
- (e) the convening and constituting of courts-martial and the appointment of prosecutors at trials by courts-martial;
- (f) the adjournment, dissolution and sitting of courts-martial;
- (g) the procedure to be observed in trials by courts-martial and the appearance of legal practitioners thereat;
- (h) the confirmation, revision and annulment of, and petitions against, the findings and sentences of courts-martial;
- (i) the carrying into effect of sentences of courts-martial;
- (j) the forms of orders to be made under the provisions of this Act relating to courts-martial, (imprisonment for life)<sup>2</sup> and imprisonment;
- (k) the constitution of authorities to decide for what persons, to what amounts and in what manner, provisions should be made for dependent under section 99, and the due carrying out of such decisions;
- (l) the relative rank of the officers, junior commissioned officers, warrant officers, petty officers and non-commissioned officers of the regular Army, Navy and Air Force when acting together;
- (m) any other matter directed by this Act to be prescribed.

## NOTES

1. (a) The Central Government is empowered to make rules for the purpose of carrying into effect the provisions of AA. The rules so made must not contain anything contrary to or inconsistent with any provision of the said Act itself. Consequently, if any rule is found to conflict with some section of AA, the section must prevail.

(b) The Army Rules, 1954 have been made in pursuance of this section.

2. Sub-sec 2(m).—See AA.s. 3(xix).

**192. Power to make regulations.**—The Central Government may make regulations for all or any of the purposes of this Act other than those specified in section 191.

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<sup>1</sup>Omitted by Act No. 37 of 1992.

<sup>2</sup>See IPC, s 53A.

## NOTE

The Regulations made under this section may cover a wider field than the limited purposes for which rules can be framed under AA.s. 191(1).

**193. Publication of rules and regulations in Gazette**—All rules and regulations made under this Act shall be published in the Official Gazette and, on such publication, shall have effect as if enacted in this Act.

**[193A. Rules and regulations to be laid down before Parliament.** — Every rule and every regulation made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session in two or more successive sessions, and if, before the expiry of the session immediately following the session, or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation]<sup>1</sup>.

**194.** (Repealed)<sup>2</sup>.

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<sup>1</sup>Inserted by Act No. 20 of 1983.

<sup>2</sup>See Act No. 36 of 1957, Sec 2.

**CHAPTER XVI**

[Omitted]<sup>1</sup>

**TRANSITORY PROVISIONS [Omitted]<sup>1</sup>**

**195.** [Omitted]<sup>1</sup>

**196.** [Omitted]<sup>1</sup>

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<sup>1</sup>Omitted by Act No. 37 of 1992

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## MINISTRY OF DEFENCE

*New Delhi, the 22nd July 1950*

**S.R.O. 125.**—In exercise of the powers conferred by section 21, sub-section (4) of section 102 and section 191 of the Army Act, 1950 (XLVI of 1950), the Central Government is pleased to make the following rules:—

1. *Short Title.*—These rules may be called the Army Act Rules, 1950.
2. *Definition.*—In these rules 'the Act' means the Army Act, 1950.
3. *Unauthorised Organisations.*—No person subject to the Act shall, without the express sanction of the Central Government,—
  - (i) be a member of or be associated in any way with any society, institution or organization that is not recognised as part of the Armed Forces of the Union; or
  - (ii) be a member of or be associated in any way with any trade union or labour union, or any class of trade or labour unions.
4. *Political and other Activities.*—(1) No person subject to the Act shall attend, address, or take active part in, any meeting or demonstration held for party or political purposes, or belong to or join, or subscribe in aid of, any political association or movement.  
  
(2) No person subject to the Act shall issue an address to electors or in any other manner publicly announce himself or allow himself to be publicly announced as a candidate or as a prospective candidate for election to Parliament, Legislature of a State, local authority, or other public body, or act as a member of a candidate's election committee, or in any way actively prosecute a candidate's interests.
5. *Communications to the Press, Lectures, etc.*—No person subject to the Act shall—
  - (i) publish in any form whatever or communicate directly or indirectly to the Press any matter on a service subject or containing any service information, or publish or cause to be published any book or letter or article or other document on such matter or containing such information, without the prior sanction of the Commander-in-Chief or any other officer specified by him in this behalf; or
  - (ii) deliver a lecture or wireless address on a service subject or containing any information or views on any service subject without the prior sanction of the Commander-in-Chief or any other officer specified by him in this behalf.

*Explanation.*—For the purpose of this rule, service information and service subject mean information or subject, as the case may be, concerning the forces.

6. *Release.*—A person subject to the Act may be released from the service in accordance with the Release Regulations for the Army or such other regulations as may be made from time to time.

7. *Authorised Deductions.*—The following deductions may be made from the pay, non-effective pay and all other emoluments payable to a person subject to the Act,—

- (i) upon the general or special order of the Central Government, any sum required to meet any public claim there may be against him, any regimental debt that may be due from him or any regimental claim,
- (ii) any sum required to meet compulsory contributions to any Provident Fund, or any Benevolent or other fund approved by the Central Government.

*Explanation.*—(i) “Public claim” means any public debt or disallowance including any over-issue made through an error as to the facts; or a deficiency or irregular expenditure of public money or store of which, after due investigation, no explanation satisfactory to the Central Government is given by the person who is responsible for the same.

(ii) The aforesaid deductions shall be in addition to those specified in the Act.

8. *Prescribed Officers Under Section 93 of the Act.*—The prescribed officers for purposes of section 93 of the Act shall be, in the case of an officer, the Commander-in-Chief and, in the case of a person other than an officer, the officer empowered to convene a court-martial for his trial.

9. *Delay Report.*—In cases of delay between the committal of a person into custody and the ordering of the assembly of a court-martial or a summary disposal of the charge, a special report as required in Section 103 of the Act shall be forwarded by the commanding officer to the officer empowered to convene a court-martial for his trial.

10. *Prescribed Officer Under Section 164(2).*—The prescribed officer for purposes of sub-section (2) of Section 164 shall be the officer superior in command to the one who confirmed the finding or sentence of the court-martial.

11. *Prescribed Officer Under Section 165.*—The prescribed officer for purposes of Section 165 shall be the confirming officer or any officer superior in command to him and in the case of a Summary Court-martial any officer superior in command to the officer who held the Summary Court-martial provided such superior officer has power not less than a Brigade Commander.

12. *Continuation of certain rules, regulations, etc.*—All rules, regulations, orders, directions and instructions made or issued before the commencement of the Act by or under the authority of the Central Government or of the Commander-in-Chief or by any other competent authority, in so far as they—

- (a) provide for the manner in which and the period for which any person belonging to the regular Army may be taken into and detained in military custody,
- (b) prescribe the procedure to be observed at the trial of offences committed by persons belonging to the regular army by any competent military authority;



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(c) regulate the appearance of legal practitioners at any trial held by any such authority as is referred to in clause (b);

and all the Indian Army Act Rules made under the Indian Army Act, 1911 shall, in so far as they are not inconsistent with the provisions of the Act, continue in force and be deemed to be rules made under the Act.

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<sup>1</sup> Inserted by SRO. 55/85

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<sup>1</sup> Inserted by SRO 17(E), dated 6th December, 1993

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**MINISTRY OF DEFENCE****NOTIFICATION**

New Delhi, the 27th November, 1954

**S.R.O. 484.**—In exercise of the powers conferred by Section 191 of the Army Act 1950 (XLVI of 1950), and all other powers enabling in this behalf, and in supersession of the Indian Army Act Rules, and the Army Act Rules, 1950 published with the notifications of the Government of India in the late Army Department No. 911, dated the 3rd November, 1911, and the Ministry of Defence No. S.R.O. 125, dated the 22nd July, 1950, respectively, the Central Government hereby makes the following rules, namely:—

**THE ARMY RULES, 1954****CHAPTER—I****PRELIMINARY**

1. **Short title.**—These rules may be called the Army Rules, 1954.

2. **Definition.**—In these rules, unless the context otherwise requires,—

- (a) “the Act” means the Army Act, 1950 (XLVI of 1950);
- (b) “Appendix” means an appendix set forth in these rules;
- (c) “Field Officer” includes an officer, not being a general officer, of any rank (including brevet rank) above the rank of Captain;
- (cc) [ Omitted ]<sup>1</sup>
- (d) “proper military authority”, when used in relation to any power, duty, act or matter, such military authority as, in pursuance of these rules or the regulations made under the Act or the usages of the service, exercises or performs that power or duty or is concerned with the act or matter;
- (di) [ Omitted ]<sup>2</sup>
- (dii) [ Omitted ]<sup>2</sup>
- (diii) “reckonable commissioned service” means service from the date of permanent commission, or the date of seniority for promotion fixed on grant of that commission including any ante date for seniority granted under the rules in force on grant of commission:

Provided that periods of service forfeited by sentence of court-martial or by summary award under the Act and periods of absence without leave, shall be excluded but periods during which furlough rates of pay are drawn and periods of captivity on prisoners of war rates of pay shall be included.<sup>3</sup>

(e) “Section” means a Section of the Act;

(f) all words and expressions used in these rules and not defined, but defined in the

<sup>1</sup>Omitted by SRO 216/88

<sup>2</sup>Omitted by SRO 216/88

<sup>3</sup>Omitted by <sup>3</sup>SRO 188 of 04 Jun 1979

Act shall have the same meanings as in the Act.

**3. Reports and applications.**— Any report or application directed by these rules to be made to a superior authority, or a proper military authority, shall be made in writing through the proper channel, unless the said authority, on account of military exigencies or otherwise, dispenses with the writing.

**4. Forms in Appendices.** —(1) The forms set forth in the appendices to these rules, with such variations as the circumstances of each case may require, may be used for the respective purposes therein mentioned, and if used, shall be sufficient, but a deviation from such forms shall not, by reason only of such deviation, render invalid any charge, warrant, order, proceedings or any other document relevant to these rules.

(2) Any omission of any such form shall not, by reason only of such omission, render any act or thing invalid.

(3) The directions in the notes to, and the instructions in, the forms shall be duly complied with in all cases to which they relate, but any omission to comply with any such directions in the notes or instructions shall not, merely by reason of such omission, render any act or thing invalid.

**5. Exercise of power vested in holder of military office.**— Any power or jurisdiction given to, and any act or thing to be done by, to or before any person holding any military office for the purpose of these rules may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service.

**6. Cases unprovided for.**— In regard to any matter not specifically provided for in these rules, it shall be lawful for the competent authority to do such thing or take such action as appears to it to be just and proper.

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## CHAPTER II

### ENROLMENT AND ATTESTATION

**7. Enrolling officers.**— The following persons shall be the “enrolling officers” for the purpose of section 13, namely :-

- (a) all recruiting and assistant recruiting officers including officers of the Indian Navy or of the Air Force, who may be appointed as such,
- (b) the officer commanding a regiment, battalion or training or regimental centre, and
- (c) any extra assistant recruiting officer or other person who may be appointed as an “enrolling officer” by the Adjutant General.

#### NOTES

1. For forms of enrolment see Appendix I. Enrolling officer must himself sign the form.
2. For “Corps” see AA.s. 3(vi) and AR 187(1). Every person enrolled under the AA must belong to some corps or department from which he can ordinarily be transferred in accordance with the conditions of his enrolment (if they provide for such transfer) or with his own consent; but see AR 10 and notes thereto. He can be transferred with or without his consent from one portion of his corps or department to another.
3. Direct enrolment into the reserve of a corps can be effected either by the officer commanding the reserve centre or by the ordinary enrolling officers of the corps of which the reserve forms part.

**8. Persons to be attested.**— All combatants, and other enrolled persons who may be selected to hold non-commissioned or acting non-commissioned rank shall, when reported fit for duty be attested in the manner provided in section 17.

#### NOTE

See AA.s. 16 and notes thereto.

**9. Oath or affirmation to be taken on attestation.** — (1) Every person required to be attested under section 16 shall make and subscribe an oath or affirmation in one of the following forms or in such other form to the same purport as the attesting officer ascertains to be in accordance with the religion of the person to be attested, or otherwise binding on his conscience.

#### Form of Oath

I.....do swear in the name of God that I will bear true faith and allegiance to the Constitution of India as by the law established and that I will, as in duty bound, honestly and faithfully serve in the regular Army of the Union of India and go wherever ordered by land, sea or air, and that I will observe and obey all commands of the President of the Union of India and the commands of any officer set over me even to the peril of my life.

#### Form of Affirmation

I.....do solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will as in duty bound, honestly and faithfully serve in the regular Army of the Union of India and go wherever ordered by land, sea or air, and that I will observe and obey all commands of the President of the Union of India and the commands of any officer set over me even to the peril of my life.

(2) The aforesaid oath or affirmation shall whenever practicable, be administered by the commanding officer of the person to be attested (or in the presence of such commanding officer by a person empowered by him in this behalf) in the manner provided in section 17. If it is not so administered, it may be administered by a magistrate or a recruiting officer or an assistant recruiting officer or officer commanding the station.



## NOTES

1. AR 9(2) prescribes the persons, in addition to the commanding officers who can attest enrolled persons.
2. See AA. ss. 16 and 17 and notes thereto.
3. The following is a translation into Hindi of the above oath and affirmation:—

**“Shapath Patra”**

“Main.....Parmatma ki Shapath lekar pratigya karta hun kih main qanun dwara nishchit kie hue Bharat ke Vidhan ka sachche man se wafadar rahunga, aur main apne kartavya ke anusar Bharat ki Regular Army (Sthayi Sena) men imandari aur sachche man se sewa karunga, aur jahan kahin mujhe prithvi, samundar ya hawa ke raste bheja jaega, main khushi se jaunga. Main, Bharat ke Rashtrapati ki aur us officer ki jo mere upar niyukt kia jae, sab agyaon ko manunga aur unka palan karunga; chahe ismen mujhe apna Jiwan bhi balidan karna pare”.

**“Pratigya Patra”**

“Main.....drirh pratigya karta hun kih main qanun dwara nishchit kie hue Bharat ke Vidhan ka sachche man se wafadar rahunga, aur main apne Kartavya ke anusar Bharat ki regular Army (Sthayi Sena) men imandari aur sachche man se sewa karunga, aur jahan kahin mujhe prithvi, samundar ya hawa ke raste bheja jaega. main khushi se jaunga. Main Bharat ke Rashtrapati ki aur us officer ki jo mere upar niyukt kia jae, sab agyaon ko manunga aur unka palan karunga; chahe ismen mujhe apna jiwan bhi balidan karna pare.”

4. In the case of Sikhs/Muslims the oath will be with “Main..... Sri Guru Granth Sahib/Pak Khudai Taala” etc.

**10. Transfer from one corps or department to another.**—Where the Central Government by any general or special order published in the Official Gazette so directs, any person enrolled under this Act may, notwithstanding anything to the contrary contained in the conditions of service for which he is enrolled, be transferred to any corps or department by order of an authority exercising powers not less than those of an officer commanding a division.

## NOTES

1. See note 2 to AR 7.
2. Enrolment is in the nature of a contract signed by the enrolled person wherein the terms and conditions of his service are specified. By this contract the enrolled person undertakes to serve continuously for a specified period in the particular corps or department in which he is enrolled. Ordinarily he can, therefore, be transferred from the corps in which he is enrolled to another corps, if the conditions of enrolment so permit. Under this rule, an enrolled person may be transferred to any corps or department by order of an authority exercising powers not less than of an officer commanding a division if the Central Government has so directed by any general or special order.

### CHAPTER III

### DISMISSAL, DISCHARGE, ETC.

**11. Discharge not to be delayed.**—(1) Every person enrolled under the Act shall, as soon as he becomes entitled under the conditions of his enrolment to be discharged, be so discharged with all convenient speed:

Provided that no person shall be entitled to such discharge, if the Central Government has, by notification suspended the said entitlement to discharge for the whole or a part of the regular Army.

(2) The discharge of a person, validly sanctioned by a competent authority, may, with the consent of the discharged person, be cancelled by any authority superior to the authority who sanctioned the discharge either without any conditions or subject to such conditions as such discharged person accepts.

#### NOTES

1. See notes 2 and 3 to AA.s. 22. For the prescribed authorities competent to authorise discharge see AR 13 and table annexed thereto.

2. The discharge of a person who is under the conditions of his enrolment entitled to be discharged must be authorised by the competent authority, and completed with all convenient speed by the proper authorities. See ARs 13 and 18. Until the persons discharge is completed, he remains subject to AA but any undue delay in carrying out the discharge would give him good ground for complaint.

**12. Discharge Certificate.**—(1) A certificate required to be furnished under the provisions of section 23 is hereinafter called a “discharge certificate”.

(2) A discharge certificate may be furnished either by personal delivery thereof by or on behalf of the commanding officer to the person dismissed, removed, discharged or released, or by the transmission of the same to such person by registered post.

#### NOTES

1. See AA.s. 23 and notes thereto,

2. The proper form to use is IAFY 1964 but any certificate which complies with AA.s. 23 would be legally sufficient. See also Regs Army, Paras 168 and 169.

3. An officer not being an enrolled person is not furnished with a discharge certificate.

4. When a discharge certificate is sent by post, it should be registered.

**13. Authorities empowered to authorise discharge.**—(1) Each of the authorities specified in column 3 of the Table below shall be the competent authority to discharge from service person subject to the Act specified in column 1 thereof on the grounds specified in column 2.

(2) Any power conferred by this rule on any of the aforesaid authorities shall also be exercisable by any other authority superior to it.

(2A) Where the Central Government or the Chief of the Army Staff decides that any person or class or persons subject to the Act should be discharged from service, either unconditionally or on the fulfilment of certain specified conditions, then, notwithstanding anything contained in this rule, the Commanding Officer shall also be the competent authority to discharge from service such person or any person belonging to such class in accordance with the said decision.

(3) In this table “commanding officer” means the officer commanding the corps or department to which the person to be discharged belongs except that in the case of junior commissioned officers and warrant officers of the Special Medical Section of the Army Medical Corps, the “commanding officer” means the Director of the Medical Services, Army, and in the case of junior commissioned officer and warrant officers of Remounts, Veterinary and Farms Corps, the “Commanding Officers” means the Director Remounts, Veterinary and Farms.

TABLE

Category	Grounds of discharge	Competent authority	Manner of discharge
1	2	3	4
Junior Commissioned Officers.	I.(i)(a) On completion of the period of service or tenure specified in the Regulations for his rank or appointment, or on reaching the age limit whichever is earlier, unless retained on the active list for further specified period with the sanction of the Chief of the Army staff or on becoming eligible for release under the Regulations.	Commanding Officer	
	(b) At his own request on transfer to the pension establishment.	Commanding Officer	
	I. (ii) Having been found medically unfit for further service.	Commanding Officer	To be carried out only on the recommendation of an Invaliding Board.
	I (iii) All other classes of discharge.	(a) In the case of Junior Commissioned Officers granted direct commissions during the first 12 months service Area/ Divisional Commander	If the discharge is not at the request of the Junior Commissioned Officer, the competent authority before sanctioning the discharge shall, if the circumstances of the case permit, give the Junior Commissioned Officer concerned an opportunity to show cause against the order of discharge.
		(b) In the case of JCOs not covered by (a), serving in any Army or Command the General Officer Commanding-in-Chief of that army or command if not below the rank of Lieutenant General.	
		(c) In any other case the Chief of the Army Staff.	

TABLE

Category	Grounds of discharge	Competent authority	Manner of discharge
1	2	3	4
Warrant Officer	II. (i) (a) On completion of the period of service or tenure specified in the Regulations for this rank or appointment, or on reaching the age limit, whichever is earlier, unless retained on the active list for a further specified period with the sanction of the Brigade/Sub Area commander or on becoming eligible to release under the Regulations.	Commanding Officer	
	(b) At his own request on transfer to the pension establishment.	Commanding Officer	
	II. (ii) Having been found medically unfit for further service.	Commanding Officer	To be carried out only on the recommendation of an Invaliding Board.
	II.(iii) All other classes of discharge	Warrant Officer class-I the General Officer Commanding-in-Chief of the Command in which the warrant officer is serving. Other warrant officer – Divisional, Area or Independent Brigade/Sub Area Commanders	If the discharge is not at the request of the warrant officer the competent authority before sanctioning the discharge shall, if the circumstances of the case permit give the warrant officer an opportunity to show cause against the order of the discharge.
Persons enrolled under the Act who have been attested.	III. (i) On fulfilling the conditions of his enrolment or having reached the stage at which discharge may be enforced.	Commanding Officer and, in the case of a person of the rank of Havildar (or equivalent rank) where such person is to be discharged, otherwise than at his own request and where the commanding officer below the rank of Lieutenant Colonel, the Brigade or Sub Area Commander (SRO 116/65).	
	III. (ii) On completion of a period of army service only, there being no vacancy in the Reserve.	Commanding Officer (in the case of persons unwilling to extend their Army service).	Applicable to person enrolled for both Army service and Reserve service (A person who has the right to extend

TABLE

Category	Grounds of discharge	Competent authority	Manner of discharge
1	2	3	4
			his Army service and wishes to exercise that right cannot be discharged under this head)
	III (iii) Having been found medically unfit for further service	Commanding Officer	To be carried out only on the recommendation of an invaliding Board.
	III (iv) At his own request before fulfilling the conditions of his enrolment.	Commanding Officer	The Commanding officer will exercise the power only when he is satisfied as to the desirability of sanctioning the application and the strength of the unit will not thereby be unduly reduced.
	III (v). All other classes of discharge	Brigade/sub Area Commander	The Brigade or sub area Commander before ordering the discharge shall, if the circumstances of the case permit give to the person whose discharge is contemplated an opportunity to show cause against the contemplated discharge.
Persons enrolled under the Act but not attested	IV. All classes of discharge	Commanding Officer or Officer Commanding Recruit reception Camp or a Recruiting, Technical Recruiting or Deputy Technical Recruiting officer.	In the case of persons requesting to be discharged before fulfilling the conditions of their enrolment, the commanding officers will exercise this power only where he is satisfied as to the desirability of sanctioning the application that the strength of the unit will not thereby be unduly reduced.  Recruits who are considered unlikely to become efficient soldiers will be dealt with under this item.

## NOTES

1. A CO who considers it desirable to retain on the active list a JCO or WO who is desirous of continuing to serve beyond the date on which he would ordinarily be retired, should forward an application to that effect six months before that date. In all other cases discharge should be carried out in accordance with the provisions of ARs 11 and 12. For definition of CO see AA.s. 3(v).

2. When compulsory discharge of a JCO or WO or OR is sought on grounds of misconduct, the authority competent to sanction the same should satisfy itself that trial by court-martial of such a person is inexpedient or impracticable for reason other than probable failure to establish the charges, and that further retention in service of the individual is undesirable.

In all cases of discharge under items (I), (iii), II (iii) or III(v) competent authority sanctioning the same must, if the circumstances of the case permit, give the person concerned an opportunity to show cause against the order of discharge.

3. The discharge certificate for a person discharged under item I(iii) will specify the particular cause of discharge—

- e.g., On resignation of his commission .
- On transfer to the pension establishment for a specified reason.
- Compulsory, with gratuity.
- Services no longer required.

4. The discharge certificate for a person discharged under item II (iii) will specify the particular cause of discharge

- e.g., On resignation of his 'Warrant.
- On transfer to the pension establishment for a specified reason.
- Compulsory, with gratuity .
- Services no longer required.

5. The discharge certificate for a person discharged under items III(v) and IV will specify the particular cause of discharge—

- e.g., Irregular enrolment.
- Compulsory transfer to pension establishment, or discharge with gratuity, for a special reason.
- At his own request before fulfilling the conditions of his enrolment.
- Services no longer required.
- On completion of army service only, there being no vacancy in the Reserve (in the case of persons willing to extend their army service). Having reached the stage at which discharge may be enforced (in the case of persons of the rank of Havildar, or equivalent rank, otherwise than at their own request).

6. See AR 18 for date from which discharge takes effect.

7 In no case discharge can be made retrospective, AR 18(3), nor can a valid discharge be cancelled without the person's consent [AR 11(2)].

**13-A. Termination of service of an officer by the Central Government on his failure to qualify at an examination or course.—**

(1) When an officer does not appear at or, having appeared fails to qualify, at the retention examination or promotion examination or any other basic course or examination within the time or extended time specified in respect of that examination or course, the Chief of the Army Staff<sup>1</sup> [or the Military Secretary]<sup>1</sup> shall call upon the officer to show cause why he should not be compulsorily retired or removed from the service.

(2) In the absence of any explanation or in the event of the explanation being considered by the Chief of the Army Staff [or the Military Secretary]<sup>1</sup> to be unsatisfactory, the matter shall be submitted to the Central Government for orders, together with the Officer's explanation and the recommendation of the Chief of the Army Staff<sup>1</sup> [or the Military Secretary]<sup>1</sup> as to whether the officer should be—

- (a) called upon to retire; or
- (b) called upon to resign.

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<sup>1</sup> Inserted by SRO 235 of 1991.



(3) The Central Government, after considering the explanation, if any, of the officer and the recommendation of the Chief of the Army Staff<sup>1</sup> [or the Military Secretary] may call upon the officer to retire or resign, and on his refusing to do so, the officer may be compulsorily retired or removed from the service on pension or gratuity, if any, admissible to him.

**14. Termination of service by the Central Government on account of misconduct.—**

(1) When it is proposed to terminate the service of an officer under Section 19 on account of misconduct, he shall be given an opportunity to show cause in the manner specified in sub-rule (2) against such action:—

Provided that this sub-rule shall not apply :—

- (a) where the service is terminated on the ground of conduct which has led to his conviction by a criminal court; or
- (b) where the Central Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.

(2) When after considering the reports on an officer's misconduct, the Central Government or the Chief of the Army Staff is satisfied that the trial of the officer by a court-martial is inexpedient or impracticable, but is of the opinion, that the further retention of the said officer in the service is undesirable, the Chief of the Army Staff shall so inform the officer together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence:

Provided that the Chief of the Army Staff may withhold from disclosure any such report or portion thereof if, in his opinion, its disclosure is not in the interest of the security of the State.

In the event of the explanation of the officer being considered unsatisfactory by the Chief of the Army Staff, or when so directed by the Central Government, the case shall be submitted to the Central Government, with the officer's defence and the recommendation of the Chief of the Army Staff as to the termination of the officer's service in the manner specified in sub-rule (4).

(3) Where, upon the conviction of an officer by a criminal court, the Central Government or the Chief of the Army Staff considers that the conduct of the officer which has led to his conviction renders his further retention in service undesirable, a certified copy of the judgment of the criminal court convicting him shall be submitted to the Central Government with the recommendation of the Chief of the Army Staff as to the termination of the officer's service in the manner specified in sub-rule (4).

[(4) When submitting a case to the Central Government under the provisions of sub-rule (2) or sub-rule (3), the Chief of the Army Staff shall make his recommendation whether the officer's service should be terminated and if so, whether the officer should be:-

- (a) dismissed from the service ; or
- (b) removed from the service ; or
- (c) compulsorily retired from the service.

5. The Central Government after considering the reports and the officer's defence, if any, or the judgement of the criminal court, as the case may be, and the recommendation of the Chief of the Army Staff, may—

- (a) dismiss or remove the officer with or without pension or gratuity; or
  - (b) compulsorily retire him from the service with pension and gratuity,
- if any, admissible to him ]<sup>1</sup>

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<sup>1</sup> Substituted by SRO 17(E), dated 6th December, 1993.

## NOTES

1. See AA.ss. 18 and 19 and notes thereto.
2. Action is to be initiated under this rule when the services of an officer are to be terminated on grounds of misconduct. The Central Government or the COAS should be satisfied, before initiating action, that the trial of the officer by court-martial is inexpedient or impracticable for reasons other than probable failure to establish the charges against him, and that his further retention in service is undesirable.
3. For the date from which dismissal or removal takes effect, see AR 18 and notes thereto.
4. The dismissal or removal cannot be made retrospective, nor can such valid dismissal or removal be cancelled without the person's consent.
5. Dismissal under this rule is not a punishment as under AA.s. 71. It merely amounts to termination of an officer's commission/service without his consent. Removal is a less grievous form of dismissal.
6. No show cause notice is required to be given to an officer under this rule if his dismissal/removal is sought on grounds of misconduct for which he has already been convicted by a Criminal Court. Whereas an officer convicted by a court-martial for misconduct, must be given the show cause notice, except when the Central Government considers it inexpedient or impracticable to do so as stipulated in proviso (b) to sub-rule (1).

**15. Termination of Service by the Central Government on grounds other than misconduct.**—(1) When the Chief of the Army Staff is satisfied that an officer is unfit to be retained in the service due to inefficiency or physical disability the officer—

- (a) shall be so informed,
- (b) shall be furnished with the particulars of all matters adverse to him, and
- (c) shall be called upon to urge any reasons he may wish to put forward in favour of his retention in the services;

Provided that clauses (a), (b) and (c) shall not apply if the Central Government is satisfied that for reasons, to be recorded by it in writing, it is not expedient or reasonably practicable to comply with the provisions thereof.

Provided further that the Chief of the Army Staff [or Military Secretary]<sup>1</sup> may not furnish to the officer any matter adverse to him, if in his opinion, it is not in the interest of the security of the State to do so.

(2) In the event of the explanation being considered by the Chief of the Army Staff [or Military Secretary]<sup>1</sup> unsatisfactory, the matter shall be submitted to the Central Government for orders, together with the officer's explanation and the recommendation of the Chief of the Army Staff as to whether the officer should be—

- (a) called upon to retire; or
- (b) called upon to resign.

(3) The Central Government after considering the reports, the explanation, if any, of the officer and the recommendation of the Chief of the Army Staff, may call upon the officer to retire or resign, and on his refusing to do so, the officer may be compulsorily retired or removed from the service on pension or gratuity, if any admissible to him.

## NOTES

1. See Notes to AR 14.
2. It would appear that action is to be initiated under this rule when it is intended to terminate the service of an officer on grounds of inefficiency only. When it is intended to terminate his services on grounds of physical disability, action should be initiated under AR 15-A and not under this rule.

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<sup>1</sup> Inserted by SRO 17 (E), dated 6th December, 1993

3. For the date from which the termination of services becomes effective, see AR 18 and notes thereto.

4. Services under this rule cannot be terminated with retrospective effect, nor can such termination be cancelled without the officer's consent.

**15-A. Release on medical grounds.**—(1) An officer who is found by a Medical Board to be permanently unfit for any form of military service may be released from the service in accordance with the procedure laid down in this rule.

(2) The President of the Medical Board shall, immediately after the Medical Board has come to the conclusion that the officer is permanently unfit for any form of military service, issue, a notice specifying the nature of the disease or disability he is suffering from and the finding of the Medical Board and also intimating him that in view of the finding he may be released from the service; every such notice shall also specify that the officer may, within fifteen days of the date of receipt of the notice, prefer a petition against the finding of the Medical Board to the Chief of the Army Staff through the President of the Medical Board:

Provided that where in the opinion of the medical board the officer is suffering from a mental disease and it is either unsafe to communicate the nature of the disease or disability to the officer or the officer is unfit to look after his interests, the nature of the disease or disability shall be communicated to the officer's next-of-kin who shall have the like right to petition.

(3) If no petition is preferred within the time specified in sub-rule (2), the officer may be released from the service by an order to that effect by the Chief of the Army Staff [or the Adjutant General]<sup>1</sup>.

(4) If a petition is preferred within the time specified in sub-rule (2), it shall be forwarded to the Central Government together with the records thereof and the recommendation of the Chief of the Army Staff [or the Adjutant General]<sup>1</sup>. The Central Government may, after considering the petition and the recommendation of the Chief of the Army Staff [or the Adjutant General]<sup>1</sup>, pass such order as it deems fit.

#### NOTES

1. Action is to be initiated under this rule when the release of an officer is to be initiated on medical grounds or because of physical disability and he is found to be permanently unfit for any form of military service.

2. The COAS would be competent to order the release of an officer under this rule, if no petition is preferred within the time specified in sub-rule (2), either by the officer or his next of kin. Where such a petition is preferred, within the stipulated time, the Central Government alone would be competent to order the release.

**16. Release.**—A person subject to the Act may be released from the service in accordance with the Release Regulations for the Army or in accordance with any other regulations, instructions or orders made in that behalf.

#### NOTE

See Release Regulations

**16A. Retirement of Officers<sup>2</sup>.**—(1) Officers shall be retired from service under the orders of the Central Government, or the authorities specified in sub rule (2), with effect from the afternoon of the last date of the month in which they:—

- (a) attain the age limits specified in sub-rule (5); or
- (b) complete the tenures of appointment specified in sub-rule 5 (f) (ii) and (g) (ii) and sub-rule (6), whichever is earlier.

<sup>1</sup> Inserted by SRO 61 dated 07 Feb 1991.

<sup>2</sup> Substituted vide SRO 17 (E), dated 6th Dec. 1993

(2) The authorities referred to in sub-rule (1) shall be :

- (a) the Director General Armed Forces Medical Services in respect of Officers of the Army Medical Corps, Army Dental Corps and Military Nursing Service ;
- (b) the Additional Director General, Remount and Veterinary Corps in respect of officers of that Corps below the rank of Colonel ;
- (c) the Deputy Director General of Military Farms in respect of Officers of the Military Farms below the rank of Colonel;
- (d) the Military Secretary, Army Headquarters in respect of all other Officers.

(3) The orders shall specify the date from which retirement shall be effective and subject to the provisions of sub-rule (4), the officer shall be relieved of his duties on that date.

(4) An Officer who has attained the age of retirement or has become due for such retirement on completion of his tenure, may be retained in the service for a further period by the Central Government, if the exigencies of the service so requires.

(5) The following shall be the age of retirement for officer :—

(a) of Armoured Corps, Infantry Artillery, Engineers and Signals :

Upto and including the rank of Major	—50 years
Lieutenant Colonel (Time Scale)	—51 years
Lieutenant Colonel (Selection)	—52 years
Colonel	—52 years
Brigadier	—54 years
Major General	—56 years
Lieutenant General	—58 year
General	—60 years

(b) of Army Service Corps (Excluding Food Inspection Organisation), Army Ordnance Corps, Electrical and Mechanical Engineers, Pioneer Corps and Intelligence Corps :

Upto and including the rank of Colonel	—52 years
Brigadier	—54 years
Major General	—56 years
Lieutenant General	—58 years

(c) of Food Inspection Organisation :

Upto and including the rank of Lieutenant Colonel (Time Scale)	—52 years
Lieutenant Colonel (Selection)	—52 years

(d) of Judge Advocate General's Department, Army Education Corps, Military Farms, Special List Officer [Quartermaster, Technical Record Officers] and Army Physical Training Corps (Master-at-Arms) and Remount and Veterinary Corps :

Upto and including the rank of Colonel	—55 years
Brigadier	—56 years
Major General	—57 years
Lieutenant General	—58 years

(e) of Army Medical Corps, Army Dental Corps and Military Nursing Service :

Upto and including the rank of Lieutenant Colonel	—55 years
Colonel	—57 years
Brigadier	—58 years
Major General	—59 years
Lieutenant General	—60 years
All officers of Army Medical Corps (Non-Technical)	—55 years

(f) (i) permanently seconded to Defence Research and Development Organisation :

Upto and including the rank of Major General or equivalent	—57 years
Lieutenant General	—58 years

Provided that officers upto the rank of Major General or equivalent shall be given two reviews; one at the age of 52 years and the other at the age of 55 years, carried out well in advance by the Defence Research and Development Organisation Selection Board as per its own laid criteria, to determine the suitability for continuation beyond that age unless the officer volunteers for retirement. The officers found unsuitable for continuation in either of reviews shall retire on attaining the age of 52 years or 55 years, as the case may be.

(ii) the tenure in the substantive rank of Lieutenant General shall be four years.

(g) (i) permanently seconded to Directorate General Quality Assurance :

Upto and including the rank of Major General or equivalent	—57 years
Lieutenant General	—58 years

Provided that officers upto the rank of Major General or equivalent shall be given two reviews; one at the age of 52 years and the other at the age of 55 years, carried out well in advance by the Inspection Selection Board as per its own laid criteria, to determine the suitability for continuation beyond that age. The officers found unsuitable for continuation in either of reviews shall retire on attaining the age of 52 years or 55 years, as the case may be.

(ii) the tenure in the rank of Lieutenant General shall be four years.

(h) of Engineers permanently seconded to Survey of India as under the civil rules applicable to them from time to time.

(6) The following shall be the tenures of appointment for the purpose of retirement :

(a) The tenure in the rank of a General shall be a maximum of 3 years

(b) Army Medical Corps Officers holding the rank of Lieutenant General shall serve in that rank for one tenure of 4 years :

Provided an officer holding the appointment of Director General Medical Services (Army) or Director General Medical Services (Navy) or Director General Medical Services (Air) or Commandant Armed Forces Medical College or Commandant Army Medical Corps School and Centre, Lucknow or Additional Director General Armed Forces Medical Services in the rank of Lieutenant General shall, in the event of his being appointed as Director General Armed Forces Medical Services, shall serve for a combined tenure of 5 years.

(c) The tenure of Army Dental Corps Officers of the rank of Major General shall be a maximum of 4 years.

Explanation I— For the purpose of this rule,—

(a) “Lieutenant Colonel” means a Lieutenant Colonel by Selection and includes a Lieutenant Colonel by time scale in the Army Medical Corps, Army Dental Corps and Veterinary Cadre of Remount and Veterinary Corps;

- (b) “rank” means a substantive rank.

Explanation II— For the purpose of this rule,—

- (a) Age of retirement as specified in sub-rule (5) shall apply to permanent commissioned officers in their respective substantive ranks.
- (b) Stipulated age of retirement in the rank of Lieutenant General, Major General in Army Education Corps, Intelligence Corps, Remount and Veterinary Corps, Judge Advocate General’s Department, Pioneer Corps, Military Farms and Special List Officers Cadre will be applicable only when these ranks are sanctioned in the Corps, Department or Cadre, as the case may be.
- (c) Officers of the Intelligence Corps, Judge Advocate General’s Department, Army Education Corps, Remount and Veterinary Corps, and Military Farms who had opted to be governed by the age of retirement prevalent prior to the issue of Government of India. Ministry of Defence, letter Nos A/49453/AG/PS2 (a)/3770S/D (AG) dated 26 Jul 1984 and A/49453/AG/PS2 (a)/Minor Corps-S/D (AG) dated 26 Jul 1985, as applicable, shall continue to be so governed<sup>1</sup>.

### NOTES

(a) A substantive Lieutenant Colonel (Time Scale) belonging to the Defence Research and Development and Production and Inspection Organisation, Army Medical Corps (Non-Technical), Remount Cadre of Remount and Veterinary Corps and Military Farms, promoted to that rank on completion of 24 years reckonable commissioned service and held against the appointment tenable in the rank of Major will be retained in service in that rank upto 3 years or upto the age of compulsory retirement or upto completion of 27 years commissioned service (rendered as Permanent Commissioned Officer including the period of ante-date of full pay commissioned service of non-regular officers reckoned for purpose of seniority and promotion on grant of Permanent Commission), whichever is the earliest.

(b) Provision contained in Item (a) above shall also continue to apply to such of the officers of Army Service Corps (including Food Inspection Organisation), Army Ordnance Corps, Electrical and Mechanical Engineers, Pioneer Corps, Intelligence Corps, Army Education Corps and Judge Advocate General’s Department as were granted the rank of Lieutenant Colonel (Time Scale) prior to the 1st December, 1976 and are held against the appointment tenable in the rank of Major and are adversely affected by the application of the age limits prescribed for retirement for this rank. In the operation of the said provision, the age of compulsory retirement in their case shall be taken as applicable to the rank of Major of their respective Service.

(c) (1) Officers who are not approved for retention in service beyond the minimum age of retirement or the minimum period of service specified to earn full pension, if that occurs after attaining the minimum age of retirement, shall be retired.

(2) Cases for retention in service beyond the minimum age, of retirement or the minimum period of qualifying service (reckonable commissioned service in the case of Defence Research and Development and Production and Inspection Organisations and Army Medical Corps) required to earn full pension shall be assessed by the appropriate Selection Board sufficiently in advance of the attainment of that age or completion of that period. Retention in service shall be subject to the following conditions, namely :—

(i) an officer shall not be in a medical classification lower than Grade 1 in ‘S’ factor and 2 in any one of the other SHAPE factors in the case of Army Medical Corps and Army Dental Corps, and S1 H1 A1 P1 E1 or S1 H2 A1 P1 E1 or S1 H1 A1 P1 E2 in the case of Defence Research and Development and Production and Inspection Organisation. In other cases, an officer shall be in an acceptable Medical Classification. Colonels of the Remount and Veterinary Corps and Military Farms in Medical Classification lower than S1 H1 A1 P1 E1 or S1 H2 A1 P1 E1 or S1 H1 A1 P1 E2 may also be retained in service provided that—

(A) such retention would be in public interest;

(B) an officer of the Armoured Corps, Artillery, Engineers, capable of performing the normal active service duties of the rank in which he is being retained;

(C) any defect, disability or disease from which officer is suffering is not likely to be aggravated by service conditions;

(ii) the officer’s efficiency for his rank shall be of a sufficiently high standard in the cases of Armoured Corps, Artillery, Engineers, Signals, Infantry, Army Service Corps (excluding Food Inspection Organisation). Army Ordnance Corps, Electrical and Mechanical Engineers and Pioneer Corps, and of a specially high standard in the case of others;



(iii) an officer found fit for further promotion but not so promoted for want of vacancies in the higher rank shall be preferred;

(iv) an officer shall not block (seriously block in the case of Armoured Corps, Artillery, Engineers, Signals, Infantry, Army Service Corps (excluding Food Inspection Organisation), Army Ordnance Corps, Electrical and Mechanical Engineers and Pioneer Corps) the promotion prospects of deserving junior officers;

(v) an officer of the Armoured Corps, Artillery, Engineers, Signals, Infantry, Army Service Corps (excluding Food Inspection Organisation), Army Ordnance Corps, Electrical and Mechanical Engineers and Pioneer Corps, whose performance or medical fitness deteriorates during the period of his retention in service shall be retired from service.

**16-B. Retirement of an officer at his own request.**—(1) The retirement of an officer at his own request before he becomes liable to [ ]<sup>1</sup> retirement under rule 16A shall require the sanction of the Central Government.

(2) An officer whose request to retire is granted may, before he is retired, apply to the Central Government for withdrawal of his request. The Central Government may, at its discretion, grant such withdrawal of his application.

**16-C. Resignation of Commission.**—(1) An officer shall have no right to resign his commission but may submit an application to the Central Government to resign his commission. He shall not be relieved of his duties until the Central Government has accepted his resignation.

(2) An officer whose application to resign his commission has been accepted may, before he is relieved of his duties, apply to the Central Government for withdrawal of the said application. The Central Government may, at its discretion, grant withdrawal of his application.

**17. Dismissal or removal by Chief of the Army Staff and by other officers.**—Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court, or a court-martial, no person shall be dismissed or removed under sub-section (1) or sub-section (3), of section 20, unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service :

Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this rule, he may, after certifying to that effect, order the dismissal or removal without complying with the procedure set out in this rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government.

#### NOTES

1. A show cause notice is required to be given under this rule to the individual whose dismissal or removal from service is contemplated, except when the authority competent to order such dismissal or removal considers it inexpedient or impracticable to give such notice as stipulated in the proviso to the rule.

Show cause notice will not be necessary when the dismissal or removal is sought on grounds of misconduct for which the person has already been convicted by a criminal court or court-martial..

2. When dismissal or removal of a person is sought on grounds of misconduct for which he has not been convicted by a criminal court or a court-martial, the authority competent to order such dismissal or removal should satisfy itself that trial by court-martial of such a person is inexpedient or impracticable for reasons other than probable failure to establish the charges, and that further retention in service of the individual is undesirable.

3. All cases of dismissal/removal under this rule where the prescribed procedure has not been followed are to be reported to the Central Government.

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<sup>1</sup> Omitted by SRO. 17(E), dated 6th December, 1993

**18. Date from which retirement, resignation, removal, release, discharge or dismissal otherwise than by sentence of court-martial takes effect.**-(1) The dismissal of an officer under Section 19 or the retirement, resignation, release or removal of such officer shall take effect from the date specified in that behalf in the notification of such dismissal, retirement or removal in the Official Gazette.

(2) The dismissal of a person subject to the Act, other than an officer whose dismissal otherwise than by sentence of a court-martial is duly authorised or the discharge of a person so subject whose discharge, if duly authorised, shall be carried out by the commanding officer of such person with all convenient speed. The authority competent to authorise such dismissal or discharge may, when authorising the dismissal or discharge, specify any future date from which it shall take effect :

Provided that if no such date is specified, the dismissal or discharge shall take effect from the date on which it was duly authorised or from the date on which the person dismissed or discharged, ceased, to perform military duty, whichever is the later date.

(3) The retirement, removal, resignation, release, discharge or dismissal of a person subject to the Act shall not be retrospective.

#### NOTES

1. See ARs 11 and 12 and notes thereto. As to cashiering and dismissal awarded by court-martial,- see AR 168 and notes thereto.

2. In the case of a person serving in India with his unit it will generally be convenient for authorities authorising the dismissal or discharge not to specify any date but permit the CO to relieve the person of military duty on the most convenient date. In other cases, it may sometimes be more convenient for the authority to specify the date.

3. The competent authority cannot make the dismissal or discharge retrospective. Moreover, he must if he desires to specify a date, specify it at the time he authorises the dismissal or discharge. There is no legal objection to the "future date" being specified in suitable cases, e.g., "date of disembarkation"; but whenever possible a precise date should be specified. For dismissal or discharge when out of India, see AAs. 24 and notes thereto.

4. If the dismissal or discharge of a person is found to be illegal, e.g., if it was not authorised by a competent authority, that person will be entitled to pay from the date of his illegal discharge although he performed no military duty. Also see AR 11(2).

## CHAPTER IV

## RESTRICTIONS OF FUNDAMENTAL RIGHTS

**19. Unauthorised organisation.**—No person subject to the Act shall, without the express sanction of the Central Government—

- (i) take official cognisance of, or assist or take any active part in, any society, institution or organisation, not recognised as part of the Armed Forces of the Union; unless it be of a recreational or religious nature in which case prior sanction of the superior officer shall be obtained;
- (ii) be a member of, or be associated in any way with, any trade union or labour union, or any class of trade or labour unions.

## NOTES

1. See Army Act Section 21 and notes thereto.
2. The fundamental right to form associations or unions enjoyed by every citizen under Art. 19(1)(c) of the Constitution is abrogated in its application to members of the regular Army under this rule. Similarly under ARs 20 and 21 the fundamental rights to freedom of speech and expression and assembly enjoyed by every citizen under Art. 19(1)(a) and (b) are abrogated in their application to members of the regular Army. The aforesaid rights have been so abrogated because of the nature of duties performed by the members of the regular Army and for the maintenance of discipline among them.
3. Contravention of any of the ARs 19 to 21 would be punishable under AA.s. 63.

**20. Political and non-military activities.**—(1) No person subject to the Act shall attend, address, or take part in, any meeting or demonstration held for a party or any political purposes, or belong to or join or subscribe in the aid of, any political association or movement.

(2) No person subject to the Act shall issue an address to electors or in any other manner publicly announce himself or allow himself to be publicly announced as a candidate or as a prospective candidate for election to Parliament, the Legislature of a State or a local authority, or any public body or act as a member of a candidate's election committee, or in any way actively promote or prosecute a candidate's interests.

## NOTE

See notes to AA.s. 21 and AR 19.

**21. Communications to the Press, Lectures, etc.**—No person subject to the Act shall—

- (i) publish in any form whatever or communicate directly or indirectly to the Press any matter in relation to a political question or on a service subject or containing any service information, or publish or cause to be published any book or letter or article or other document on such question or matter or containing such information without the prior sanction of the Central Government, or any officer specified by the Central Government in this behalf; or.
- (ii) deliver a lecture or wireless address, on a matter relating to a political question or on a service subject or containing any information or views on any service subject without the prior sanction of the Central Government or any officer specified by the Central Government in this behalf.

**Explanation.**—For the purposes of this rule, the expression “service information” and “service subject” include information or subject, as the case may be, concerning the forces, the defence or the external relation of the Union.

## NOTE

See notes to AA.s. 21 and AR 19.

## CHAPTER V

## INVESTIGATION OF CHARGES AND TRIAL BY COURT-MARTIAL

## SECTION I—INVESTIGATION OF CHARGES AND REMAND FOR TRIAL

## Power of Commanding Officers

<sup>1</sup>[22. **Hearing of Charge.**—(1) Every charge against a person subject to the Act shall be heard by the Commanding Officer in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him, and to call any witness and make such statement as may be necessary for his defence :

Provided that where the charge against the accused arises as a result of investigation by a court of inquiry, wherein the provisions of rule 180 have been complied with in respect of that accused, the commanding officer may dispense with the procedure in sub-rule (1).

(2) The commanding officer shall dismiss a charge brought before him if, in his opinion, the evidence does not show that an offence under the Act has been committed, and may do so if, he is satisfied that the charge ought not be proceeded with:

Provided that the commanding officer shall not dismiss a charge which he is debarred to try under sub-section (2) of Section 120 without reference to superior authority as specified therein.

(3) After compliance of sub-rule (1), if the commanding officer is of opinion that the charge ought to be proceeded with, he shall within a reasonable time—

- (a) dispose of the case under section 80 in accordance with the manner and form in Appendix III; or
- (b) refer the case to the proper superior military authority; or
- (c) adjourn the case for the purpose of having the evidence reduced to writing; or
- (d) if the accused is below the rank of warrant officer, order his trial by a summary court-martial;

Provided that the commanding officer shall not order trial by a summary court-martial without a reference to the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender unless -

- (a) the offence is one which he can try by a summary court-martial without any reference to that officer; or
- (b) he considers that there is grave reason for immediate action and such reference cannot be made without detriment to discipline.

(4) Where the evidence taken in accordance with sub-rule (3) of this rule discloses an offence other than the offence which was the subject of the investigation, the commanding officer may frame suitable charge (s) on the basis of the evidence so taken as well as the investigation of the original charge.]<sup>1</sup>

**Explanation**-where an officer, other than the commanding officer, proposes to proceed against an accused under Sec 80 of the Act, the provisions of sub rules (1) to (3) of this rule shall, in so far as they are applicable, may be complied with by such officer<sup>2</sup>.

## NOTES

1. Under AA.s. 135 police and other civilian witnesses may be summoned to attend before a CO if it is considered desirable to compel their attendance by the service of summons. Witnesses cannot be sworn or affirmed.

<sup>1</sup> Subs by SRO 17(E), dated 6th December, 1993

<sup>2</sup> Inserted by SRO 258/2002

2. As to procedure where a criminal court and court-martial each have jurisdiction, in respect of a civil offence, see AA.s. 125 and 126 and notes thereto and AR 197-A. See also Regs Army para 418.

3. Every offence which a person subject to AA can commit, is an offence under the said Act, because it is either a military offence specified in the Act or a civil offence under AA.s. 69.

In deciding whether a charge under AA.s. 63 should be proceeded with, the CO must consider whether the alleged offence is prejudicial to good order and military discipline; if in his opinion it is not, the charge must be dismissed. He must also consider whether having regard to the limitation of time prescribed by AA.s. 122, the accused is liable to be proceeded against.

4. The CO must dismiss the charge if there is no evidence of any offence under the AA having been committed or if the accused has been previously acquitted or convicted of the alleged offence by any Court, military 'or civil, or has been summarily dealt with under sections 80, 83, 84 or 85 or the charge has previously been dismissed [AA.s. 121 and AR 53(1)(a)]. He may dismiss it, if he considers that the evidence is doubtful or the case is trivial, or, in the exercise of his discretion, for any reason, e.g., the good character of the accused.

5. No particular time is fixed within which a CO must dispose of a case, so that he can always carefully consider a difficult case, but as a rule he should decide immediately, and should never delay for more than a day, unless further evidence is required.

6. To make an entry against a person without punishment is a summary disposal and not a dismissal of the case.

7. There is no offence which a CO is compelled by the AA or AR to send before a court-martial and each case should be considered on its merits. A CO, however, has no power to punish an officer summarily.

8. A summary of evidence is to be made in every case where it is intended to remand the accused for trial by a GCM or DCM or where the accused is an officer, JCO or WO for summary disposal of the charge under AA. ss. 83, 84 or 85. In the case of SCM, a summary of evidence need not be made, if it is intended to try the accused forthwith without reference to superior authority either because the charge admits of this or because of such grave necessity as is referred to in proviso (b) to AR 22(3). The offences which a CO must (except in cases of grave necessity falling under the above proviso) refer to superior authority before ordering trial by SCM are detailed in AA.s. 120(2). All other offences can be tried by SCM without such reference.

9. The summary of evidence or a true copy thereof, should accompany the application for a GCM, DCM or summary disposal by superior authority, or for sanction to hold a SCM when such sanction is necessary.

10. A person subject to AA has no right to elect to be tried by court-martial except as provided in AA.s. 84(a).

11. A CO disposes of a case summarily by awarding one of the punishments specified under AA.s. 80 and which he can award. A term of imprisonment or detention awarded by a CO should be awarded in days and will commence to run from the day of award. In law (in the absence of any special provision) there is no division of a day, and therefore, however late in the day a prisoner is committed, his term of imprisonment or detention is considered to have, commenced at the first minute of that day that is, the first minute after midnight. The sentence will therefore, begin on the first minute of the day of award, and end at sunset of the day it expires.

12. The award is considered final when the accused has been removed from the presence of the CO. The CO can at any time diminish the punishment before its completion, though he cannot add to it.

13. For "proper military authority" see AR 2 (d).

**23. Procedure for taking down the summary of evidence.—**(1) Where the case is adjourned for the purpose of having the evidence reduced to writing, at the adjourned hearing evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, and of any other person whose evidence appears to be relevant, shall be taken down in writing in the presence and hearing of the accused before the commanding officer or such officer as he directs.

(2) The accused may put in cross-examination such questions as he thinks fit to any witness, and the questions together with the answers thereto shall be added to the evidence recorded.

(3) The evidence of each witness after it has been recorded as provided in the rule when taken down, shall be read over to him and shall be signed by him or if he cannot write his name shall be attested by his mark and witnessed as a token of the correctness of the evidence recorded. After all the evidence against the accused has been recorded, the

accused will be asked; "Do you wish to make any statement? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence." Any statement thereupon made by the accused shall be taken down and read over to him, but he will not be cross-examined upon it. The accused may then call his witnesses, including if he so desires, any witnesses as to character.

(4) The evidence of the witnesses and the statement (if any) of the accused shall be recorded in the English language. If the witness or accused, as the case may be, does not understand the English language, the evidence or statement, as recorded, shall be interpreted to him in a language which he understands.

(5) If a person cannot be compelled to attend as a witness, or if owing to the exigencies of service or any other grounds (including the expense and loss of time involved), the attendance of any witness cannot in the opinion of the officer taking the summary (to be certified by him in writing), be readily procured, a written statement of his evidence purporting to be signed by him may be read to the accused and included in the summary of evidence.

(6) Any witness who is not subject to military law may be summoned to attend by order under the hand of the commanding officer of the accused. The summons shall be in the form provided in Appendix III.

#### NOTES

1. The adjourned hearing for the purpose of reducing the evidence to writing should, if possible be held on the same day as the investigation. The CO may direct another officer to take down the evidence, but an officer who has given material evidence at the investigation must not be appointed for this purpose. He should be an officer of some experience and with a good knowledge of the vernacular. The adjutant of the accused or squadron or company commander, should usually be detailed (See also note to AR 43). The record of evidence under this rule is called 'the summary of evidence'. The summary of evidence can be ordered only by the CO of the accused. See AR 22(3)(c). When it is recorded under the orders of an officer other than the accused's CO, summary disposal of a charge under AA.ss. 83, 84 or 85 or the trial of the offender by GCM or DCM on the basis of such a summary of evidence may render the proceedings invalid.

2. Summary of evidence cannot be taken on oath or affirmation.

3. The accused cannot claim to be represented by counsel at the taking of summary of evidence.

4. The evidence (so far as it is relevant and admissible) of every witness who gave evidence before the CO must be taken down unless good reason renders it not reasonably practicable to call him. The evidence of witnesses who did not appear before the CO may also be taken for either prosecution or defence, so long as it appears to be relevant. In reducing the evidence to writing immaterial statements may be omitted and all hearsay and irrelevant matter should be excluded.

5. The accused must be allowed to put any reasonable question to a witness, and especially to put questions respecting any variance between the evidence taken down and that given before the CO. If the accused declines to cross-examine any witness the fact should accordingly be stated.

6. The formal caution provided for in sub-rule (3) must be given as soon as the evidence for the prosecution is closed. If it is necessary to take additional summary, the accused must again be formally cautioned before he makes any further statement. The fact that he was duly cautioned should be recorded in the summary. It is advisable to have an independent witness present when the accused is cautioned and when he makes the statement. Such independent witness apart from the officer recording the summary would also be competent to prove the statement of the accused at the trial subsequently, if necessary.

7. The statement of an accused person can only be given in evidence at the trial, if it is voluntary. If it was made voluntarily, the mere fact that the caution was not given will not prevent it being used as evidence, but in no case must he be authoritatively called on to account for his proceedings, or required to make any statement, or cross-examined or asked any questions. Any such statement or the answers to any such questions will not be admissible in evidence against him.

8. The accused may call witnesses on his behalf, and their evidence will be taken down and included in the summary; but he is not bound to call a witness because such witness gave evidence before the CO.

9. The certificate referred to in sub-rule (5) can conveniently be written below the signature of the absent witness on his written statement or abstract of evidence.

10. In many cases, the provisions of sub rule (5) will effect a saving of time and expense, e.g., where a civilian witness is required to prove some fact not really in dispute. Such witness must, however, attend in person at the trial.



11. If it is found necessary to call at the trial some witness for the prosecution whose evidence is not included in the summary, an abstract of the evidence to be given by him should be supplied to the accused as early as possible. See AR 135 and notes thereto.

12. For the issue of summons see AAs.135. For form of summons see Appendix III Part III.

13. For power to dispense with sub-rules (1) to (5) see AR 36.

14. For memoranda for the guidance of officers taking down a summary of evidence, see pages 304 to 307

**24. Remand of accused.**—(1) The evidence and statement (if any) taken down in writing in pursuance of rule 23 (hereinafter referred to as the “summary of evidence”), shall be considered by the commanding officer, who thereupon shall either—

- (a) remand the accused for trial by a court-martial; or
- (b) refer the case to the proper superior military authority; or
- (c) if he thinks it desirable, re-hear the case and either dismiss the charge or dispose of it summarily.

(2) If the accused is remanded for trial by a court-martial, the commanding officer shall without unnecessary delay either assemble a summary court-martial (after referring to the officer empowered to convene a district court-martial or on active service a summary general court-martial when such reference is necessary) or apply to the proper military authority to convene a court-martial, as the case may require.

#### NOTES

1. For memoranda for the guidance of COs see pages 307-309 .

2. For power to dispense with this rule, see AR 36.

3. The evidence in the summary may not correspond with that given at the original investigation and the case may appear in a new aspect. The CO may, therefore, decide to re-hear the case, and, if he thinks fit, dispose of it summarily or try it by SCM, if he has jurisdiction to do so. He can dismiss the case on re-hearing it

4. Where precise information as to the locality of the offence is likely to be of use in understanding a case, a plan drawn to scale should accompany a summary of evidence submitted to superior authority. If it is considered necessary that matters of evidence should be shown on this plan, (e.g., place where the body was found in a murder case or position of accused or a witness) the plan should be in duplicate, and these matters should only appear on one copy, if the plan is subsequently produced at the trial, the unmarked copy will be used, being put in and sworn/affirmed to by the person who made it. These matters of evidence will then (if necessary) be marked on it, in accordance with the evidence given at the trial, and a note to that effect made in the proceedings.

5. Vernacular documents attached to a summary of evidence should be accompanied by a translation in English.

6. The delay in assembling a SCM should be avoided. The accused should be warned for trial at least 96 hours before hand, except on active service when he should be so warned at least 24 hours before the trial commences. See AR 34 and notes thereto.

**25.** [ Omitted ]<sup>1</sup>

**26. Summary disposal of charges against Officer, Junior Commissioned Officer or Warrant Officer.**—(1) Where an officer, a junior commissioned officer or a warrant officer is remanded for the disposal of a charge against him by an authority empowered under section 83, 84 or 85 to deal summarily with that charge the summary of evidence [ ]<sup>2</sup> shall be delivered to him free of charge, with a copy of the charge as soon as practicable after its preparation and in any case not less than twenty four hours before the disposal.

<sup>1</sup> Omitted by S.R.O 17(E), dated 6th December, 1993

<sup>2</sup> Omitted by S.R.O 17(E), dated 6th December, 1993

(2) Where the authority empowered under section 83, 84 or 85 decides to deal summarily with a charge against an officer, junior commissioned officer or warrant officer, he shall, unless he dismisses the charge or unless the accused has consented in writing to dispense with the attendance of the witnesses, hear the evidence in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him, and to call any witnesses and make a statement in his defence.

(3) The proceedings shall be recorded as far as practicable in accordance with the form in Appendix IV and in every case in which punishment is awarded, the proceedings together with the conduct sheet, summary [ ]<sup>1</sup> of evidence and written consent to dispense with the attendance of witnesses (if any) of the accused shall be forwarded through the proper channel to the superior military authority as defined in section 88.

#### NOTES

1. The accused should be warned for trial at least 24 hours before his summary trial.
2. An authority can dispose of the case summarily not only if asked to do so, but also if he is asked to convene a court-martial for the trial of the offender. Even if he is asked to deal summarily with a case he can, if he thinks it desirable, convene a Court-martial. If on perusal of the summary <sup>1</sup> of evidence and other documents, he thinks fit, he can at once, without bringing the accused before him order dismissal of the charge, or order a court-martial, or he can decide to hear the evidence with a view to dealing summarily with the case. After hearing the evidence the authority can still dismiss the case or order a court-martial or he can deal summarily with it but if he proposes to award a punishment of forfeiture of seniority or service for promotion, the accused has a right to claim trial by court-martial. See AA.s, 84.
3. Form I in apprndix IV Part I is to be used when the accused has given his consent in writing to dispense with the attendance of witnesses at the trial.
4. The oral statement of the accused made in reply to question 4 in Form 1 or 2, will be recorded or a gist thereof prepared and attached. If the accused submits a written statement, it would be attached to the proceedings.
5. Question number 5 in form 1 or Question number 6 in form 2 is to be put to an officer, JCO or WO, if the authority proposes to award a punishment other than reprimand, severe reprimand or stoppages.
6. See Notes to forms 1 and 2 regarding their disposal. After disposal of a charge if the finding is that of guilty, the form accompanied by the conduct sheet (IAFF-3013), in duplicate, Summary of evidence, statement of the accused and written consent of the accused is to be forwarded through the usual channels to the Headquarters of the command concerned, who will show them to the DYJAG of the command. In the case of punishments, awarded by GOC-in-C of a command, these documents will be forwarded to the AG's Branch (PS-I) at Army Headquarters. When the finding is that of not guilty, only the finding will be communicated to Headquarters command concerned in the case of JCOs & WOs and to Army Headquarters in the case of officers.
7. In the case of JCOs and WOs, the form together with the summary of evidence, statement of the accused and written consent of the accused is required to be returned to the unit for attachment to his Regimental conduct sheet (IAFF 3013).
8. Form 2 in Appendix IV Part I is to be used when the accused does not consent to dispense with attendance of witnesses at his summary trial.
9. A statutory review of summary trial proceedings is provided. See AA.ss. 86 to 88.
10. Civilian witnesses cannot be summoned to attend summary trials under AA.ss. 83,84,or 85  
See AAs. 135

**27. Delay reports.**— (1) In every case where a person subject to the Act, who is not on active service, is in military custody for a period longer than eight days without a court-martial for his trial having been ordered to assemble, or without a punishment having been awarded to him under section 80, the Commanding Officer shall make a report in the form specified in Appendix III to the officer empowered to convene a general or a district court-martial for the trial of such person. Such report shall be made to the authority mentioned in

<sup>1</sup> Omitted by SRO 17(E), dated 6 December, 1993

this rule at intervals of every eight days until a court-martial is ordered to assemble, or a punishment is awarded under section 80, or such person is released from custody as the case may be.

(2) A copy of every such report made on or after the forty-eighth day of such custody shall be sent by the commanding officer direct to the Deputy Judge Advocate General of the command in which such person is held in custody.

(3) (i) Detention in military custody beyond two months of a person subject to the Act, who is not on active service and in whose case a court-martial for trial has not been ordered to assemble shall require the sanction of the Chief of the Army Staff, or any officer authorized by him in this behalf with the approval of the Central Government, who may sanction further detention for a specific period, which he may extend from time to time, subject to a total period of detention of three months.

(ii) Any such detention beyond a period of three months shall require the approval of the Central Government.

#### NOTES

1. See AA.ss. 102 and 103 and notes thereto.

2. For active service, see AA.ss., 3(i) & 9.

3. (i) For military custody, see AA.s. 3(xiii).

(ii) 'any officer authorized by him' in sub rule 3 (i) - The COAS with the approval of Central Government has authorised GOC-in-C of the commands to sanction, subject to the provisions of Army Rule 27(3), detention in military custody beyond two months of a person subject to the Army Act including an officer or a JCO when not on active service and in whose case a court-martial for trial has not been ordered to assemble. (Auth : Army Headquarters letter No. 91515/AG/DVI dated 11 Jan 1998)

(iii) Arrest whether open or close amounts to military custody.

4. Detention in custody beyond 2 months of a person who is not on active service and in whose case a court-martial is not ordered to assemble, requires the sanction of the COAS. Such detention beyond 3 months requires the sanction of the Central Government.

5. Once a court-martial has been ordered to assemble, e.g., a convening order is issued the sanction of the COAS / GOC-in-C or the Central Government will not be necessary. The requirement of the rule for obtaining sanction should not be circumvented by issue of a convening order far in advance of the date of trial.

6. If necessary an accused person may be released from arrest without prejudice to his re-arrest, if trial cannot be convened within 2 or 3 months. If his detention beyond a period of two or three months is considered necessary, steps should be taken to obtain the sanction well in advance. An accused person should not be kept in such detention in anticipation of a sanction. Detaining an accused in custody beyond two or three months without a sanction, makes such detention illegal and a post-facto sanction obtained would not render such detention legal.

7. Under AR 33(6), an accused person has a right to address a petition to the DYJAG or AJAG of the command concerned if he is kept in custody longer than 48 days without being brought to trial or is not given full liberty for preparing his defence.

8. Unnecessary detention in custody of an accused without bringing him to trial amounts to an offence under AA.s 50(a).

#### Framing Charges

**28. Charge-sheet and charge.**— (1) A charge-sheet shall contain the whole issue or issues to be tried by a court-martial at one time.

(2) A charge means an accusation contained in a charge-sheet that a person subject to the Act has been guilty of an offence.

(3) A charge-sheet may contain one charge or several charges.

## NOTES

1. The charge-sheet is usually prepared by the CO or adjutant of the accused's unit; but in the case of a trial by GCM or DCM, AR 37 makes the convening officer equally responsible for its correctness. It must be signed by the officer in actual command of the unit to which the accused belongs. If the accused is attached to another unit, the charge-sheet must be signed by the CO of the unit to which he is so attached. The order for the trial must be endorsed at the foot of the charge-sheet and signed by the convening officer. Charge-sheet cannot be endorsed for trial by a staff officer as such.

2. For submission of certain charges to DYJAG or AJAG of the command concerned before trial, see Regs. for the Army para 459.

3. There may be several charge-sheets (see AR 79), but the court can only deal with one charge-sheet at a time. When there are two or more charge-sheets, they must be consecutively numbered.

4. The "charge" referred to in this rule is the formal written charge upon which the accused is to be tried as distinct from the charge or complaint mentioned in AA.s. 101 and ARs 22 and 23, which give rise to the preliminary investigation.

5. All charges, including the alternative charges, must be consecutively numbered. As to insertion of charges in separate charge-sheets see AR 79 and notes thereto.

6. An alternative charge should not be preferred, where a special finding is possible under AA.s. 139 e.g., on a charge of desertion there is no need to prefer a charge of absence without leave as an alternative. See AA.s. 139(a).

**29. Commencement of charge-sheet.**—Every charge-sheet shall begin with the name and description of the person charged and state his number, rank, name and the corps or department (if any) to which he belongs. When the accused person does not belong to the regular Army, the charge-sheet shall show by the description of him, or directly by an express averment, that he is subject to the Act in respect of the offence charged.

## NOTES

I. The name or description of a person charged is immaterial so long as the identity is established. See also notes to ARs 32(1), 50(1) and 113. As an officer, JCO, WO or person enrolled in the regular Army is always subject to AA, a statement in the description of the accused that he belongs to a corps of the regular Army will be sufficient to aver and evidence of his so belonging will be sufficient to prove that he is subject to AA, without expressly adding the words.

2. If the accused is subject to AA under specified conditions e.g. an enrolled person of the Territorial Army, the description must contain an averment as to how he is subject to AA. See specimen charge-sheet 'Description of the accused' serials 6 to 8 at page 233 for persons who are subject to AA under specified conditions. See AA.s. 2(1) Clauses (d) to (i).

3. When an accused holding an appointment is brought, to trial by a court-martial he is to be arraigned in his army rank with his appointment shown as under :—

No. .... Sepoy (Lance Naik)..... Regiment

4. For army ranks see Regs Army para 131.

**30. Contents of charge.**—(1) Each charge shall state one offence only, and in no case shall an offence be described in the alternative in the same charge.

(2) Each charge shall be divided into two parts—

(a) statement of the offence; and

(b) statement of the particulars of the act, neglect or omission constituting the offence.

(3) The offence shall be stated, if not a civil offence, as nearly as practicable in the words of the Act, and if a civil offence, in such words as sufficiently describe in technical words.

(4) The particulars shall state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect or omission is intended to be proved against him as constituting the offence.

(5) The particulars in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the latter particulars as are so referred, to shall be deemed to form part of the first mentioned charge as well as of the other charge.

(6) Where it is intended to prove any fact in respect of which any deduction from pay and allowances can be awarded as a consequence of the offence charged, the particulars shall state those facts and the sum of the loss or damage it is intended to charge.

#### NOTES

1. For forms of charges and preliminary note as to their use, see pages 234 to 235. See also memoranda for guidance of courts-martial at page 304.

2. The convening officer or in the case of trial by SCM, the CO should seek the advice of DYJAG or AJAG of the command concerned in any case where doubt exists as to the manner in which the charge should be framed. Charges for trial by GCsM and for indecency, fraud, theft (except ordinary theft) and civil offences (except simple assaults) should be referred to the DJAG or AJAG concerned before trial; See Regs Army para 459.

3. A single charge disclosing two separate offences would be bad for duplicity e.g., a charge under AA.s. 40 for using threatening language and insubordinate language to his superior officer or a charge under AA.s. 52 for committing theft of Government property and dishonestly retaining Government property. But the use of the word "and" in the statement of offence is permissible where the charge discloses only one offence e.g., a charge under AA.s. 54(b) for losing by neglect arms, equipment and clothing, the property of the Government because an accused is not charged with two offences but with a single offence, which is constituted by his having lost by neglect the various articles specified in the charge.

4. The rule against duplicity is also applicable to the particulars of the charge e.g., in a charge under AA.s. 36(d) an averment that the accused left his post without orders from his superior officer and remained absent for a specified period, is not permissible as the particulars disclose two separate offences. Similarly in a charge under AA.s. 44, it is not permissible to aver two false answers to two separate questions set forth in the enrolment form or in a charge under AA.s. 40(c) to aver two separate instances of use of insubordinate language.

5. The incidental mention of a separate offence in the particulars, however, would not of itself invalidate the charge e.g., the mention in the particulars of a charge under AA.s. 40(a) for assaulting his superior officer, use of insubordinate language chargeable under AA.s. 40(c) which accompanied a menacing gesture and showed its purport.

6. A single transaction, though technically disclosing more than one offence should not, as a rule be made the subject of more than one charge. For instance where use of criminal force to a superior officer is accompanied by insubordinate language, the use of criminal force alone should be charged (assuming the evidence to be satisfactory), the language being admissible in evidence as to the intent. On the other hand, if it seems desirable, a man can legally be charged in two separate charges with escape, from arrest and absence without leave (following such escape).

7. The statement of the particulars must support the statement of the offence; e.g., if the statement of an offence laid under AA.s. 52(a) alleged that the accused committed theft in respect of property of the Government, particulars stating that the accused dishonestly received, or was in unauthorised possession of, the property would not support the statement of the offence and the charge would be a bad charge, and the fact that the accused pleaded guilty to it would not affect the matter. But a merely technical difference, e.g., where the word assault is used in the statement of offence and the particulars disclose the use of criminal force, would not invalidate the charge, if the statement of offence and the particulars taken together supply the court and the accused with sufficient information of the nature of the offence which the court is to try and the accused to meet.

8. Where the statement of offence discloses an offence under AA and one or more essential elements of that offence are omitted from the particulars e.g., the word "dishonestly" in a charge "dishonestly misappropriating" or the words "knowing it to be stolen" in a charge of receiving, the omission of that element from the particulars would not invalidate the charge, if taken as a whole, it informs the accused of the allegations he is called upon to meet, and the offence for which he is arraigned.

9. When an offence is punished more severely, when committed under particular circumstances, the particulars should contain an averment about such circumstances; e.g., in a charge under AA.s. 41(2) for disobeying a lawful command of his superior officer, an averment to the effect that the offence was committed when on active service, should be made, where necessary, since the said offence when committed on active service is more severely punished than otherwise.

10. The exact or approximate date of the offence should be averred in particulars. Such averment would prima-facie show whether or not the trial in respect of the offence is time barred. See AA.s. 122(1) and notes thereto. If for reasons of security it is considered undesirable to disclose the place of offence, the words "at field" may be averred in the particulars instead of the actual place of offence.

11. When civil offences are tried by court-martial under AA.s. 69, although technical terms need not be used in the charge, the essence of the civil offence must be expressed.

12. The statement of particulars should state shortly in ordinary language what the accused is alleged to have done. All the ingredients necessary to constitute the offence should be specified, *e.g.*, if the charge is under AA.s. 41(2) for disobeying a lawful command, the particulars must state the command, rank and name of the superior officer who gave the command and the fact that the accused disobeyed it. Where a state of mind *e.g.*, intention or knowledge, is an essential ingredient of an offence, such state of mind should be averred in the particulars.

13. Vague statement must be avoided, *e.g.*, in a charge for using insubordinate language to his superior officer or for making a false statement to his CO, it is not sufficient to state that the accused used insubordinate language or made a false statement well knowing the statement to be false; the words alleged to have been spoken or written must be set out in the particulars. Similarly in a charge under AA.s. 42(e) it is not sufficient to state that the accused neglected to obey battalion orders by doing a particular act; the order it is alleged the accused neglected to obey must be set out in the particulars. See specimen charge No 35 on page 257.

14. When particulars in one charge are framed wholly or partially by reference to the particulars in another charge and the accused is convicted of the former but acquitted of the latter, the conviction when recorded should specify the place and date mention in the former charge.

15. Stoppages cannot be awarded under AA.s. 71(1) unless particulars contain a specific averment regarding the value of the loss or damage caused and proved in evidence.

**31. Signature on charge-sheet.**—The charge-sheet shall be signed by the commanding officer of the accused and shall contain the place and date of such signature.

#### NOTES

1. See note 1 to AR 28. The charge-sheet must be signed by the CO of the accused. It cannot be signed by any other officer for him.

2. For CO see AA.s. 3(v).

3. The charge-sheet should contain the place and date of signature. If for reasons of security it is inadvisable to disclose the place of signature, it may be shown as “field”. The date of signature is of assistance in ascertaining whether or not provisions of AR 34 regarding warning of the accused for trial, have been complied with.

**32. Validity of charge-sheet.**—(1) A charge-sheet shall not be invalid merely by reason of the fact that it contains any mistake in the name or description of the person charged, provided that he does not object to the charge-sheet during the trial, and that no substantial injustice has been done to the person charged.

(2) In the construction of a charge-sheet or charge, there shall be presumed in favour of supporting the same every proposition which may reasonably be presumed to be impliedly included though not expressed therein.

#### NOTES

1. Although the trial of an offender is not invalid on account of mistake in the name of the accused, such mistakes are dangerous, in so far as they may lead to mistakes of substance. Where, however, a person has been enrolled and is commonly known under an assumed name, he may be described by that name. The court has power to amend the charge by correcting any mistake in the name or description of an accused person, under AR 50 or 113.

2. Sub-rule (2) must not be relied upon as an excuse for carelessness in the preparation of charge-sheets. This sub-rule enables a court-martial, or any authority dealing with the case summarily under AA.s. 80, 83, 84 or 85, to presume matters which, though not stated in the charge, are necessary to support its validity, and can reasonably be implied from it.

#### Preparation for defence by accused person

**33. Rights of accused to prepare defence.**—(1) Correspondence between the accused and his legal advisers shall not be liable to be censored. The accused shall inform his commanding officer of the names of such advisers and shall also inform him of any distinctive marks that such correspondence will bear.

(2) An accused person shall have the right to interview any witnesses whom he may wish to call in his defence. The provisions of rule 137 shall apply to procuring the attendance of such witnesses.



(3) If the accused so desires, the commanding officer of the accused shall take such steps as the circumstances of the case permit to obtain a written statement from a witness whom the accused may wish to call in his defence. The statement shall be obtained in a closed envelope which shall be given to the accused person unopened.

(4) If the accused person gives to his commanding officer the name of any person whom he wishes to call in his defence, no person shall interview such witness with reference to the charges against the accused except in the presence of the accused, unless the accused agrees to dispense with his presence in writing. Similarly if the accused wishes to interview a witness whom the prosecutor intends to call, the interview shall be in the presence of an officer detailed by the commanding officer of the accused person.

(5) The commanding officer of the accused person or the officer responsible for his custody shall take adequate precautions so that no conversation which the accused person may have with his legal advisers or witnesses is liable to be overheard.

(6) The accused person shall have the right to address an application to the Deputy or Assistant Judge Advocate General of the command within which he for the time being is, if he is kept under arrest longer than forty-eight days without being brought to trial or is not given full liberty for preparing his defence.

(7) As soon as practicable after an accused has been remanded for trial by a general or district court-martial, and in any case not less than ninety-six hours or on active service twenty-four hours before his trial, an officer shall give to him free of charge a copy of the summary of evidence, [ ]<sup>1</sup> and explain to him his rights under these rules as to preparing his defence and being assisted or represented at the trial, and shall ask him to state in writing whether or not he wishes to have an officer assigned by the convening officer to represent him at the trial, if a suitable officer should be available. The convening officer shall be informed whether or not the accused so elects.

#### NOTES

1. For power to dispense with this rule see AR 36.

2. The freest communication which is consistent with the necessities of discipline and with the safe custody of the accused should be allowed. Failure to give the accused full opportunity of preparing his defence, and free communication with others for the purpose, may invalidate the proceedings. The accused, however, or the defending officer is not entitled to interview witnesses for the prosecution, without special authority. When so authorised, the accused or the defending officer should interview witnesses for the prosecution in the presence of an officer deputed by the CO. An accused is not bound to call as a witness everyone with whom he communicates as a possible witness on his behalf.

3. Neither the accused nor his defending officer or counsel should be permitted to interview for the purpose of general examination or interrogation any witness who has already given evidence for the prosecution at the taking of the summary of evidence, or whose evidence is included in the abstract of evidence as a witness for the prosecution unless the prosecution have, before the trial, definitely decided not to call such witness for the prosecution. If, the accused or his defending officer or counsel desire to put any specific question or questions to such a witness for the prosecution with a view to ascertain some specific fact or facts which it may be of assistance in the preparation of the defence to know, the Convening Officer should permit such question or questions to be put subject to any safeguard such as the presence of a representative of the prosecution as the Convening Officer may think fit. The converse holds good as regards interviews by the prosecution of witnesses for the defence.

4. As to defending officer and friend of accused see AR 95; and as to counsel at GCsM and DCsM, see ARs 96 to 101. As to the right of the accused to consult the JA on any question of law or procedure, see AR 105.

**34. Warning of accused for trial.**—(1) The accused before he is arraigned shall be informed by an officer of every charge for which he is to be tried and also that, on his giving the names of witnesses whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly.

The interval between his being so informed and his arraignment shall not be less than ninety-six hours or where the accused person is on active service less than twenty-four hours.

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<sup>1</sup> Omitted by SRO 17 (E), dated 6th December, 1993

(2) The officer at the time of so informing the accused shall give him a copy of the charge sheet and shall, if necessary, read and explain to him the charges brought against him. If the accused desires to have it in a language which he understands, a translation thereof shall also be given to him.

(3) The officer shall also deliver to the accused a list of the names, rank and corps (if any), of the officers who are to form the court, and where officers in waiting are named, also of those officers in courts-martial other than summary courts-martial.

(4) If it appears to the court that the accused is liable to be prejudiced at his trial by any non-compliance with this rule, the court shall take steps and, if necessary, adjourn to avoid the accused being so prejudiced.

#### NOTES

1. For power to dispense with this rule see AR 36.
2. The duty of complying with the provisions of this rule will usually devolve upon the CO in the case of summary and the prosecutor in the case of other courts-martial, who should, in any case, satisfy himself before the trial that it has been properly performed. Even if this rule is dispensed with under AR 36, the accused must have information of the charge, and opportunity of calling his witnesses.
- 3 As to arraignment, see AR 48 and notes thereto.
4. The duty of procuring attendance of witnesses at GCM and DCM devolves, under AR 137(1) upon the CO or convening officer or after assembly of the court, the presiding officer. The duty of procuring attendance of witnesses at SCM devolves under AR 137(2) upon the CO.
5. The request of an accused person for witnesses to be called on his behalf should only be refused if it is quite clear that their evidence would be immaterial, or if their attendance cannot be secured within a reasonable time. If the request is refused, the refusal and reasons for it should be communicated to the court, who will deal with the matter under sub-rule (4) and AR 138. If an essential witness is absent, the court should always adjourn for the purposes of enabling him to attend or of procuring his examination on commission.
6. For form of summons to witnesses, see Appendix III, Part III.
7. A copy and translation of the charge-sheet must always be given, unless this rule has been dispensed with under AR 36. Even where it is so dispensed with, the charges must be clearly explained to the accused, as otherwise he may not have proper opportunity to prepare his defence. If the accused objects to the charge he will have an opportunity of making his objection when called on to plead (AR 49).
8. The list of names, rank and corps of the members of the court should normally be delivered to the accused, irrespective of any demand on his part, as soon as the names of the members are known.

**35. Joint trial of several accused persons.**—(1) Any number of accused persons may be charged jointly and tried together for an offence averred to have been committed by them collectively.

(2) Any number of accused persons, although not charged jointly, may be tried together for an offence averred to have been committed by one or more of them and to have been abetted by the other or others.

(3) Where the accused are so charged under sub-rules (1) and (2), any one or more of them may at the same time be charged with and tried for any other offence averred to have been committed individually or collectively, provided that all the said offences are based on the same facts, or form or are part of a series of offences of the same or similar character.

(4) In the cases mentioned above, notice of the intention to try the accused persons together shall be given to each of the accused at the time of his being informed of the charges, and any accused person may claim, either by notice to the authority convening the court or, when arraigned before the court, by notice to the court that he or some other accused be tried separately on one or more of the charges included in the charge-sheet, on the ground that the evidence of one or more of the other accused persons proposed to be tried together with him, will be material to his defence, or that otherwise he would be prejudiced or embarrassed in his defence. The convening authority or court, if satisfied that the evidence will be material or that the accused may be prejudiced or embarrassed in his defence as aforesaid, and if the nature of the charge admits of this, shall allow the claim and such accused person, or as the case may be, the other accused person or persons whose separate trial has been claimed, shall be tried separately. Where any such claim has been made and disallowed by the authority convening the court, or by the court, the disallowance of such claim will not be a ground for refusing confirmation of the finding or sentence unless, in the opinion of the confirming authority, substantial miscarriage of justice has occurred by reason of the disallowance of such claim.

#### NOTES

1. If two accused persons are charged separately with committing the same offence, they cannot, even at their own request, be tried together because they have not been charged jointly.
2. Whether a joint or a separate summary of evidence is recorded against the accused persons, they can still be charged jointly and tried together under the circumstances specified in this rule.
3. As to swearing the court to try several accused persons, see AR 89 and notes, and as to form of proceedings in the case of a joint trial, see para 28 of memoranda on page 311.
4. If one accused pleads guilty and another not guilty, the trial of the latter upto and including the finding must be carried out before the court deals with the case of the accused who has pleaded guilty.
5. To admit of a joint charge and trial, the accused must have acted together with the common purpose of committing the offence charged.
6. The nature of the charge may not admit of a separate trial, e.g., in the case of conspiring to cause or joining in a mutiny, the essence of the charge is combination between the accused persons. Certain offences, on the other hand, cannot from their nature be committed collectively. e.g. intoxication, sentry sleeping upon or leaving his post; malingering; giving false evidence, cowardice, etc. and speaking generally, all offences where a person's individual state of body or mind is the essence of the offence. In case of doubt the accused should be tried separately.

**36. Suspension of rules on the ground of military exigencies or the necessities of discipline.**—Where it appears to the officer convening a court-martial or to the senior officer on the spot, that military exigencies or the necessities of discipline render it impossible or inexpedient to observe any of the rules 23, 24, [ ]<sup>1</sup>, 33 and 34 and sub-rule (2) of rule 95, he may, by order under his hand, make a declaration to that effect specifying the nature of such exigencies or necessities, and thereupon the trial or other proceedings shall be as valid as if the rule mentioned in such declaration had not been contained herein; and such declaration may be made with respect to any or all of the rules aforesaid in the case of the same court-martial:

Provided that the accused shall have full opportunity of making his defence, and shall be afforded every facility for preparing it, which is practicable, having due regard to the said exigencies or necessities.

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<sup>1</sup> Omitted by SRO 17 (E), dated 6th December, 1993

## NOTES

1. For form of declaration see page 286
2. The power conferred by this rule should rarely be exercised except on active service and then only if absolutely necessary. Occasionally it may be necessary to resort to it in the case of embarkation or on the line of march, or possibly in an extreme case where necessities of discipline require speedy trial and punishment.
3. In exercising the powers conferred by this rule, it is not necessary to dispense with all the provisions mentioned, e.g., it may be expedient to comply with the relevant provisions of AR 23 but not with AR 33.
4. If AR 23 is suspended, steps must be taken to inform the accused before hand of the nature of the charge, the names of the witnesses and the effect of their evidence, and the court must take care that the accused is not prejudiced by reason of the suspension, as, for instance; by not having received a summary of evidence.
5. The power of dispensing with AR 33 is only intended to be exercised where it is necessary to try a person before he can communicate with a witness or friend at a distance. The said rule should never be dispensed with except in extreme cases and even then the accused must be allowed free communication with any witness or friend on the spot.
6. Rule 34(3) should always be complied with the sub-rules (1) and (2) of the said rule, if not complied with within the time therein mentioned, should be complied with as long as possible before the court assembles.
7. The accused will not have full opportunity of making his defence unless he receives in reasonable time the information mentioned above; and if he requests a reasonable adjournment in order to consider the witnesses evidence, or to acquaint himself with the charge, or requests the postponement of cross-examination of a witness, the court should grant the request, and may adjourn for the purpose. A refusal to do so might be held to be non-compliance with the proviso to the rule and thus to invalidate the trial. For the same reason the court, even in the absence of any such request, must take care that the accused is not prejudiced by being taken by surprise, either by the charge or the evidence of witnesses.
8. When any of the provisions of ARs 33 or 34 have not been complied with, the accused has a right to ask for an adjournment if he has been prejudiced by such non compliance; or on the ground that he did not have sufficient opportunity to prepare his defence; see AR 56 (1) and (2).

## SECTION 2— GENERAL AND DISTRICT COURTS-MARTIAL

## Convening the Court

**37. Convening of General and District Court-Martial.**—(1) An officer before convening a general or district court-martial shall first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Act, and that the evidence justifies a trial on those charges, and if not so satisfied, shall order the release of the accused, or refer the case to superior authority.

(2) He shall also satisfy himself that the case is a proper one to be tried by the kind of court-martial which he proposes to convene.

(3) The officer convening a court-martial shall appoint or detail the officers to form the court and, may also appoint or detail such waiting officers as he thinks expedient. He may also, where he considers the services of an interpreter to be necessary, appoint or detail an interpreter to the court.

(4) The officer convening a court-martial shall furnish to the senior member of the court with the original charge-sheet on which the accused is to be tried and, where no judge-advocate has been appointed, also with a copy of the summary [ ]<sup>1</sup> of evidence and the order for the assembly of the court-martial. He shall also send, to all the other members, copies of the charge sheet and to the judge-advocate when one has been appointed, a copy of the charge sheet and a copy of the summary [ ]<sup>1</sup> of evidence.

## NOTES

1. With respect to the duties of the convening officer, see paras 10 to 13 of memoranda at page 309 to 310. The convening officer must ensure that he holds the necessary court-martial warrant empowering him to convene the description of court martial that he considers appropriate. A court martial convened by an officer who is not empowered to do so will lack jurisdiction.
2. Where the convening officer finds it impracticable to follow the ordinary rules as to appointing members from different corps [AR 40(1)], or as to the, rank of members [AR 40(2)], he should state his opinion in the convening order.

<sup>1</sup> Omitted by SRO 17 (E), dated 6th December, 1993

3. The declaration as to military exigencies dispensing with certain rules (AR 36), should be in a separate order. For form of declaration see page 286.

4. Under AA.s. 117(1) a court-martial, which, after commencement of the trial, is reduced below the legal minimum, is dissolved. If, therefore, the trial is likely to be prolonged, the number of members detailed to serve should be in excess of the legal minimum required. Additional members should also be detailed to serve in doubtful or complicated cases.

5. It will usually be desirable, in the case of both GCM and DCM to add two or more waiting members, in order to fill the places of officers retiring on challenge, or unable to attend owing to illness, etc.

6. In almost every case an interpreter in the language of the accused person will be necessary and should be detailed; see AR 91 and note.

7. Where several persons are to be tried separately by the same court, a copy of convening order should be prepared for each accused. The original charge-sheet and convening order will subsequently be annexed to the proceedings.

8. The object of sub-rule (4) is to enable the presiding officer and members of the court-martial to have an idea of the charge/charges on which the accused is to be arraigned. If any amendment to the charge(s) is considered necessary by the presiding officer, he should communicate his views to the convening officer before the trial begins. Only when a JA is not appointed, a copy of the summary of evidence and convening order is to be sent to the presiding officer. A copy of the summary of evidence sent to the presiding officer should have the portions of evidence which, being inadmissible or irrelevant, are not being led at the trial, completely expurgated. The JA is responsible to inform the convening officer of any informality or defect in the charge or in the constitution of the court; see AR 105(3).

9. The summary of evidence must be read in court if the accused pleads guilty, and may be used for determining the sentence. [AR 54(3)]. It may be used at the trial for the purpose of showing that a witness had previously made a particular statement, or is giving evidence which differs from that given by him when the summary was taken. Any statement of the accused contained in the summary may be read to the court as evidence at the close of the prosecution case, but before reading such statement formal proof should be given that it was made voluntarily; see AR 23(3). Except in the above instances, the summary cannot be used as evidence.

10. During the trial the presiding officer should compare the evidence given by each witness with his statement contained in the summary of evidence and, if there is any material variation, should question him thereon.

11. Members of the court must take care that they are not unduly influenced by any statement appearing in the summary of evidence, though they will naturally have regard in testing the credibility of a witness to the fact that his evidence given at the trial is contradictory to his statement at the summary. It is usually expedient that the presiding officer alone should refer to the summary.

12. Where the accused pleads guilty, the summary of evidence is to be annexed to the proceedings [AR 54(3) and form of proceedings at page 292]. If the accused pleads "not guilty", the summary should be enclosed with the proceedings when sent to the confirming officer, but it should only be annexed to the proceedings if it has been used in evidence.

**38. Adjournment for insufficient number of officers.**— (1) If, before the accused is arraigned, the full number of officers detailed are not available to serve by reason of non-eligibility, disqualification, challenge or otherwise, and if there are not a sufficient number of officers in waiting to take the place of those unable to serve, the court shall ordinarily adjourn for purpose of fresh members being appointed, but if the court is of opinion that in the interests of justice, and for the good of the service, it is inexpedient so to adjourn, it may, if not reduced in number below the legal minimum, proceed, after recording their reasons for so doing.

(2) If the court adjourns for the purpose of the appointment of fresh members, whether under these rules or otherwise, the convening officer may, if he thinks fit, convene another court.

#### NOTES

1. A GCM for which, say seven members have been detailed, should not ordinarily begin the trial with less than seven. It may be assumed that the convening officer in detailing seven members when five would have legally sufficed, had in view the possible prolongation of the trial or the desirability, in the circumstances of the case, of submitting the issues to be decided to the arbitration of a larger tribunal. But under this rule the court may proceed, unless reduced below the legal, minimum (see notes to AR 37).

2. No court can be formed if the number of officers is, from whatever cause, below the legal minimum, nor can the proceedings, even if properly commenced, be continued. In either case, a report of the circumstances must be made to the convening officer by the senior officer present. For legal minimum, see AA.ss. 113 and 114.

3. After the trial has once begun, fresh members cannot be appointed in any circumstances. See AA.s. 117(1). The trial is said to have commenced when the accused is arraigned.

**39. Ineligibility and disqualification of officers for court-martial.**— (1) An officer is not eligible for serving on a court-martial if he is not subject to the Act.

(2) An officer is disqualified for serving on a general or district court-martial if he—

- (a) is an officer who convened the court; or
- (b) is the prosecutor or a witness for the prosecution; or
- (c) investigated the charges before trial, or took down the summary of evidence, or was a member of a court of inquiry respecting the matters on which the charges against the accused are founded, or was the squadron, battery, company, or other commander, who made preliminary inquiry into the case, or was a member of a previous court-martial which tried the accused in respect of the same offence; or
- (d) is the commanding officer of the accused, or of the corps to which the accused belongs; or
- (e) has a personal interest in the case.

(3) The provost-marshal or assistant provost-marshal is disqualified from serving on a general court-martial or district court-martial.

#### NOTES

1. The term “eligible” is used with reference to an officer being subject to AA and of the necessary standing; that is to say, it refers to the status of the officer and involves no personal considerations.

2. The term “disqualified” is used with reference to the personal qualification of an officer. Except so far as is provided by AR 40, the corps to which an officer belongs is immaterial as regards his eligibility or qualification to serve on a court-martial.

3. The term “personal interest” will extend to even a remote or very small interest, e.g., in a charge relating to the theft of a sum of money, however small, belonging to an officers’ mess, or a club, every officer of that mess or club has a personal interest, and is therefore disqualified. A merely technical interest has been held to disqualify a person from holding a judicial position. e.g., a person who holds, as trustee or otherwise on behalf of others money in which he has no beneficial share himself, nevertheless has a personal interest in any charge relating to that money.

4. An officer should not be detailed to sit on any court-martial until regarded by his CO as competent to perform so important a duty.

**40. Composition of General Court-martial.**— (1) A general court-martial shall be composed, as far as seems to the convening officer practicable, of officers of different corps or departments, and in no case exclusive of officers of the corps or department to which the accused belongs.

(2) The members of a court-martial for the trial of an officer shall be of a rank not lower than that of the officer unless, in the opinion of the convening officer, officers of such rank are not, having due regard to the exigencies of the public service, available. Such opinion shall be recorded in the convening order.

(3) In no case shall an officer below the rank of captain be a member of a court-martial for the trial of a field officer.

#### NOTES

1. There is no similar restriction as to the composition of district courts-martial, which may, therefore, when necessary, be composed wholly of officers of the corps or department to which the accused belongs; but where possible they should not be so composed.

2. The expression of the convening officer’s opinion justifying a departure from general rule should be inserted in the convening order.



**Procedure at Trial—Constitution of Court**

**41. Inquiry by court as to legal constitution.**—(1) On the court-assembling, the order convening the court shall be laid before it together with the charge-sheet and the summary of evidence or a true copy thereof, and also the ranks, names and corps of the officers appointed to serve on the court; and the court shall satisfy itself that it is legally constituted; that is to say—

- (a) that so far as the court can ascertain, the court has been convened in accordance with the provisions of the Act and these rules;
- (b) that the court consists of a number of officers, not less than the minimum required by law and, save as mentioned in rule 38, not less than the number detailed;
- (c) that each of the officers so assembled is eligible and not disqualified for serving on that court-martial; and
- (d) that in the case of general court-martial, the officers are of the required rank.

(2) The court shall further, if it is a general or district court-martial to which a judge-advocate has been appointed, ascertain that the judge-advocate is duly appointed and is not disqualified for sitting on that court-martial.

(3) The court, if not satisfied with regard to the compliance with the aforesaid provisions shall report its opinion to the convening authority, and may adjourn for that purpose.

**NOTES**

1. The inquiries necessitated by this and the following rule should be conducted in closed court. The court is not “open” at this stage, and the accused has not yet been brought before it.

2. The convening order, charge-sheet and the summary of evidence are to be placed before the Court.

3. Where members are detailed by rank and corps and not by name, then only officers of the actual rank and corps stated in the convening order can serve as members.

4. It is essential that the court should ascertain, as far as it lies in its power, that it has jurisdiction. For form of convening order see page 272.

5. In the case of a GCM or DCM, the convening order must be signed by the convening officer. The absence of a properly signed convening order is a fatal flaw although an order for trial is endorsed on the charge-sheet. Apart from the specific requirements of this rule, the court must be satisfied that it is constituted strictly in accordance with the convening order.

6. The court, in considering whether it is convened in accordance with the AA and AR, can only look at the convening order. The convening officer is responsible that he holds the necessary court-martial warrant, empowering him to convene the court, and the court is not required to satisfy itself in this respect.

7. For legal minimum and for rank of members of the court, see AA.s. 113 and 114 and AR 40. (Also see Regs Army para 460).

8. For eligibility and disqualification, see AA.ss. 113 and 114 and AR 39.

9. When a court of inquiry has been held respecting a matter upon which a charge against the accused is founded, the presiding officer should insert and sign the certificate shown in the note on page 223.

10. For the appointment of JA, see AA.s. 129 and AR 103. For disqualification of JA, see AR 102.

**42. Inquiry by court as to amenability of accused and validity of charge.**—(1) If, the court is satisfied that the requirements of rule 41 have been complied with, it shall further satisfy itself in respect of each charge about to be brought before it—

- (a) that it appears to be laid against a person subject to the Act, and subject to the jurisdiction of the court, and
- (b) that each charge discloses an offence under the Act and is framed in accordance with these rules, and is so explicit as to enable the accused readily to understand what he has to answer.

(2) The court, if not satisfied on the above matters, shall report its opinion to the convening authority and may adjourn for that purpose.

#### NOTES

1. The inquiry by the court under this and the preceding rule should be in closed court.
2. For amenability to military law, i.e. to the AA, see AA.s. 2 and notes thereto.
3. As to validity of charge see ARs 28 to 32.

### Procedure at Trial—Challenge and Swearing

**43. Appearance of prosecutor and accused.**— When the court has satisfied itself that the provisions of rules 41 and 42 have been complied with, it shall cause the accused to be brought before the court, and the prosecutor, who must be a person subject to the Act, shall take his due place in the court.

#### NOTES

1. The duty of appointing the prosecutor devolves on the convening officer who ordinarily selects the adjutant of the accused persons unit; but the convening officer should not appoint himself to be the prosecutor. The prosecutor cannot confirm the finding and sentences of a court-martial. See AR 74. In trials by GCM and in complicated cases a prosecutor should be specially selected for his experience and knowledge of military law and should be as far as possible, relieved from ordinary military duty, so that he may be enabled fully to master the case. In ordinary cases one of the officers mentioned in AR 39(2) may suitably be detailed to act as prosecutor.
2. As to duties of the prosecutor, see ARs 56 to 59 and 77 and memoranda at page 312 to 314.
3. As to counsel, see ARs 96 to 101.

**44. Proceedings for challenges of members of court :**—The order convening the court and the names of the presiding officer and the members of the court shall then be read over to the accused and he shall be asked, as required by section 130, whether he has any objection to being tried by any officer sitting on the court. Any such objection shall be disposed of in accordance with the provisions of the aforesaid section:

Provided that—

- (a) the accused shall state the name of all the officers constituting the court in respect of whom he has objection, before any objection is disposed of,
- (b) the accused may call any person to give evidence in support of his objection and such person may be questioned by the accused and by the court,
- (c) if more than one officer is objected to, the objection to each officer shall be disposed of separately, and the objection in respect of the officers of the lowest in rank shall be disposed of first; and on an objection to an officer, the remaining officers of the court shall, in the absence of the challenged officer, vote on the disposal of such objection, notwithstanding that objections have also been made to any of those officers,
- (d) when an objection in respect of an officer is allowed, that officer shall forthwith retire, and take no further part in the proceedings,
- (e) when an officer so retires or is not available to serve owing to any cause, which the court may deem to be sufficient, and there are any officers in waiting detailed as such, the presiding officer shall appoint one of such officers to fill the vacancy. If there is no officer in waiting available, the court shall proceed as required by rule 38.
- (f) the eligibility, absence of disqualification, and freedom from objection of an officer filling a vacancy shall be ascertained by the court, as in the case of other officers appointed to serve on the court.

#### NOTES

1. See AAs. 130 and notes thereto.
2. Each member should answer to his name as it is called, so that the accused can identify each member who is to try him.

3. The accused must make each objection separately. He cannot object to the court collectively, except upon a plea to the jurisdiction, under AR 51. If the accused persists in objecting to the court collectively, the court should treat the objection as made to all the members individually, and the procedure provided by this rule should be strictly followed. In practice an objection to a member may be equivalent to a plea to the jurisdiction, as for example when on the trial of a field officer one of the members is objected to because he is below the rank of Captain. In such a case the objection should be dealt with under this rule, although it might more properly have been raised under AR 51.

4. The accused has no right to object to the prosecutor or JA.

5. An officer objected to on the ground of personal enmity, prejudice, or malice or for having formed and expressed an opinion on the case, should, unless the objection is obviously groundless, request and be permitted to retire. An officer successfully objected to on the ground of personal interest is disqualified from serving as a member. See AR 39(2)(e).

6. The court may be closed to consider each objection.

7. The witnesses called by the accused in support of his plea cannot be examined on oath or affirmation since the court is not yet sworn or affirmed, but provisions of AR 141 will substantially apply.

8. The officer objected to must not be present in the closed court when the objection in his respect is being considered by the court, but all the other members present, i.e. who have not retired upon objections to them being allowed, must vote on the disposal of the objection.

9. Clause (e) prescribes the manner of filling a vacancy created either by a successful objection or through non-attendance of an officer detailed. Where any waiting members are detailed, it is the duty of the presiding officer to appoint one of those members to fill a vacancy. He is not required to take the first on the list; ordinarily he should select one of corresponding rank to the retiring or absent officer. If the presiding officer is himself successfully objected to the senior remaining member will take his place (A.A.s 128) and will then proceed to fill the vacancy in the court in the manner indicated above.

10. If there is no officer in waiting available and the court is reduced in number below the legal minimum, it must adjourn for the purpose of appointment of fresh members; and though not so reduced, it should ordinarily adjourn unless it is of opinion that, in the interests of justice and for the good of the service, it is not expedient to do so. (AR 38).

11. It is desirable to ascertain before the accused is brought before the court whether a waiting member is eligible and qualified to serve if called upon. An objection to a waiting member called upon to serve will be dealt with immediately, if he is junior to any other officers who have been objected to; if he is not, the objections to junior officers will first be disposed of and he will have to vote on such objections.

12. In a doubtful case an objection should always be allowed. It is very important that the court should not only be impartial, but be believed by the accused and his comrades to be so.

**45. Swearing or affirming of members.**—As soon as the court is constituted with the proper number of officers who are not objected to, or objections in respect of whom have been over-ruled, an oath or affirmation shall be administered to every member in one of the following forms or in such other form to the same purport as the court ascertains to be according to his religion or otherwise binding on his conscience.

#### *Form of Oath*

“I ..... swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the Army Act without partiality, favour or affection and if any doubt shall arise, then, according to my conscience, the best of my understanding and the custom of war in the like cases; and I do further swear that I will not on any account at any time, whatsoever, disclose, or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial in due course of law”.

#### *Form of Affirmation*

“I do solemnly, sincerely and truly declare and affirm that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the Army Act without partiality, favour or affection; and if any doubt shall arise, then, according to my conscience, the best my understanding, and the custom of war in the like cases; and I do further solemnly, sincerely and truly declare and affirm that I will not, on any account at any time, whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial in due course of law”.

## NOTES

1. Christians and Sikhs are generally sworn, the former on the New Testament or some book containing it, and the latter on the Guru Granth. Hindus and Muslims are generally affirmed. Jews are sworn on the Old Testament.

2. As to the person to administer the oath or affirmation, see AR 47.

3. As to swearing the court to try several persons, see AR 89.

4. A person taking the oath will hold the book (New Testament, Old Testament or Guru Granth) in his uplifted hand and will say or repeat the oath after the person administering it. The oath must be administered and taken with solemnity. It is not necessary to kiss the book. Members may be sworn separately or collectively.

5. If a person desires to be sworn in the Scottish form, no question as to his religious belief is to be asked nor is he required to hold or kiss the Bible while being sworn. He will be sworn standing and holding up his right hand, and the oath will commence in these terms "I swear by Almighty God as I shall answer to God at the Great Day of Judgement....."

6. Affirmations are repeated by the person making affirmation after the person administering it.

7. In addition to providing a prescribed form of oath or affirmation, the rule permits an oath or affirmation to be administered to the person to be sworn or affirmed in such form to the same purport as the court ascertains to be according to his religion or otherwise, binding on his conscience.

8. The oath or affirmation taken by the members implies that, as a general rule, the opinions of the individual members ought not to be stated, and consequently the court ought not to disclose whether the decision was unanimous or by a majority. The decision is the decision of the court as a whole and the fact of its being unanimous or not is usually immaterial. The qualification at the end of the oath or affirmation, "unless required to give evidence thereof etc.", only applies to such cases where members of the court are charged individually with partiality or bribery, and thus in a court of justice or a court-martial it would, or might, be necessary to make disclosures regarding individual votes to the court trying the members so charged.

**46. Swearing or affirming of judge-advocate and other officers.**—After the members of the court are all sworn or have made affirmation, an oath or affirmation shall be administered to the following persons or such of them as are present at the court-martial, in such of the following forms as shall be appropriate, or in such other form to the same purport as the court ascertains to be according to the religion or otherwise binding on the conscience of the person to be sworn or affirmed :—

**(A) JUDGE ADVOCATE***Form of Oath*

"I . . . . . swear by Almighty God that I will to the best of my ability carry out the duties of Judge Advocate in accordance with the Army Act, and the rules made thereunder and without partiality, favour or affection, and I do further swear that I will not on any account at anytime whatsoever, disclose or discover the vote or opinion on any matter of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or, a court-martial in due course of law."

*Form of Affirmation*

"I ..... do solemnly, sincerely and truly declare and affirm that I will to the best of my ability carry out the duties of Judge Advocate in accordance with the Army Act and the rules made thereunder and without partiality, favour or affection, and I do further solemnly, sincerely and truly declare and affirm that I will not on any account at any time, whatsoever, disclose or discover the vote or opinion on any matter of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial in due course of law."

**(B) OFFICER ATTENDING FOR THE PURPOSES OF INSTRUCTION***Form of Oath*

"I ..... swear by Almighty God that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless required to give evidence thereof by a court of justice or a court-martial, in due course of law."

*Form of Affirmation*

“I ..... do solemnly, sincerely and truly declare and affirm that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial; unless required to give evidence thereof by a court of justice or a court-martial, in due course of law.”

**(C) SHORTHAND WRITER***Form of Oath*

“I ..... swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as I may be required, and will, when required, deliver to the court a true transcript of the same.”

*Form of Affirmation*

“I ..... do solemnly, sincerely and truly declare and affirm that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as I may be required, and will, when required, deliver to the court a true transcript of the same.”

**(D) INTERPRETER***Form of Oath*

“I ..... swear by Almighty God that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial.

*Form of Affirmation*

“I ..... do solemnly, sincerely and truly declare and affirm that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial.”

**NOTES**

1. Notes to AR 45 apply, mutatis mutandis, to this rule.
2. The form of oath and affirmation for a witness are set out in AR 140.
3. The accused has a right of objection to the shorthand writer or Interpreter, who may be sworn/affirmed at any time during the trial (AR 90); he has no right of objection to the JA or to the officers under instruction.

**47. Persons to administer oaths and affirmations.**—All oaths and affirmations shall be administered by the Judge-Advocate (if any), a member of the court, or some other person empowered by the Court to administer such oath or affirmation.

**NOTES**

1. Oaths and affirmations may be administered by any of the persons mentioned in this rule. Their being of the same religion as the person affirmed or sworn is immaterial.
2. It will generally be convenient for the JA to administer the oath or affirmation to the presiding officer and members, or if there is no JA, for the presiding officer to first administer the oath and affirmation to the members and then be himself sworn or affirmed by one of them. The oath or affirmation to the JA may be administered by the presiding officer.

**Prosecution, Defence and Summing-up**

**48. Arraignment of accused.** — (1) After the members of the court and other persons are sworn or affirmed as abovementioned, the accused shall be arraigned on the charges against him.

(2) The charges upon which the accused is arraigned shall be read and, if necessary, translated to him, and he shall be required to plead separately to each charge.

#### NOTES

- I. The accused should be arraigned by the presiding officer or JA (if any).
2. "Arraignment" consists of (a) calling upon the accused by his number (if any), Rank, Name and Description as given in the charge-sheet and asking him "Is that your number, rank, name and unit (or description)"; (b) reading the charge to him; and (c) asking him whether he is guilty or not guilty.
3. Where two or more persons are jointly charged and tried for the same offence, each is separately arraigned. Where there are more charge-sheets than one against an accused, he must be arraigned and until after the finding tried upon the first charge-sheet, before arraigned upon the second or subsequent charge-sheet; see AR 79.
4. The charge-sheet, containing the charges as settled by the convening officer, will be in the possession of the presiding officer (AR 37(4)), who will lay the charge-sheet before the court immediately before arraignment, and the charge-sheet will then be annexed to the proceedings.
5. The plea of the accused must be taken on all the charges in a charge-sheet. This applies to alternative charges if the accused has been arraigned upon them, but see AR 52(3).

**49. Objection by accused to charge.**— The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Act, or is not in accordance with these rules. The court after hearing any submission which may be made by the prosecutor or by or on behalf of the accused, shall consider the objection in closed court and shall either disallow it and proceed with the trial, or allow it and adjourn to report to the convening authority or, if it is in doubt, it may adjourn to consult the convening authority.

#### NOTES

1. A charge laid under AA.s. 54(b) for losing by neglect the property of a comrade would not disclose an offence under that section of the Act.
2. As to framing of charges see ARs 28 to 32.
3. As to joint charges see AR 35 and notes thereto.
4. For procedure where it appears that the accused is, by reason of insanity, unfit to stand his trial, see AR 145.

**50. Amendment of charge.**—(1) At any time during the trial, if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, the court may amend the charge-sheet so as to correct that mistake.

(2) If, on the trial of any charge, it appears to the court at any time before it has begun to examine the witnesses, that in the interest of justice any addition to, omission from, or alteration in, the charge is required, it may report its opinion to the convening authority, and may, adjourn and the convening authority may either direct the new trial to be commenced, or amend the charge, and order the trial to proceed with such amended charge after due notice to the accused.

#### NOTES

- I. A mistake in name or description will only be amended, if it is clear to the court that the accused is the person intended to be charged in the charge-sheet, and that, he is not prejudiced in his defence by the mistake having been made.
2. The court may act under sub-rule (1) whether the objection to the charge is taken by the accused or by the JA, or by a member of the court, and either before or after the arraignment of the accused; see ARs 42 and 49.
3. The witnesses referred to in sub-rule (2) are the ones on the substance of the charge and not those who are called as to objections to the members, or with respect to a special plea to the jurisdiction, under AR 51.
4. If the addition, omission, or alteration can be met by means of a special finding under AR 62(4) (as for instance, by omitting from the finding some of the articles alleged to have been stolen or lost by neglect, or by correcting a mistake in an immaterial date), it will not usually be necessary to have the charge amended; but if the date is material or if any addition, requires to be made to the particulars of the charge, it will be safer for the court to adjourn and apply for the amendment. If the charge appears not to disclose an offence under the AA, the court must adjourn; see AR 49.



**51. Special plea to the jurisdiction.**—(1) The accused, before pleading to a charge, may offer a special plea to the general jurisdiction of the court, and if he does so, and the court considers that anything stated in such plea shows that the court has no jurisdiction it shall receive any evidence offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and any address by or on behalf of the accused and reply by the prosecutor in reference thereto.

(2) If the court overrules the special plea, it shall proceed with the trial.

(3) If the court allows the special plea, it shall record its decision, and the reasons for it, and report it to the convening authority and adjourn; such decision, shall not require any confirmation and the convening authority shall either forthwith convene another court for the trial of the accused, or order the accused to be released.

(4) If the court is in doubt as to the validity of the plea, it may refer the matter to the convening authority, and may adjourn for that purpose or may record a special decision with respect to such plea, and proceed with the trial.

#### NOTES

1. A plea to the general jurisdiction, that is, to the right of the court generally to try the accused on any charge at all, is here kept distinct from any plea which relates only to the particular charge on which the accused is brought before the court. Under the former, he may plead, for example, that court is improperly constituted in respect of the number of the members, or that he is not amenable to the court, either as not being subject to AA or not subject to that description of the court; as for instance in the case of a JCO being brought for trial before a DCM.

2. A plea relating to the particular charge, and raising the defence of previous conviction or acquittal by a court-martial or criminal court, summary punishment by the CO, pardon of the offence or its condonation by the deliberate act of competent military authority or of the lapse of more than three years since the date of the offence (AA.s. 122) will be raised by way of plea in bar of trial, under AR 53.

3. Evidence must be taken on oath or affirmation.

4. The confirmation of the finding, after a plea to the jurisdiction has been overruled, will have the effect of confirming the decision of the court in overruling the plea. If, however, the confirming officer is of opinion that the plea is valid and should have been allowed, he must refuse to confirm the finding of the court, and another court may legally be convened.

5. If the court allows the plea, the decision of the court cannot be over-ruled, but another court may legally be convened.

6. If a special plea to the jurisdiction is raised, e.g., on the ground that the accused is not subject to AA, and the court is in doubt as to the validity of the plea, it may record a special decision to that effect, and state that it has nevertheless decided to proceed with the trial. This procedure, in effect, transfers the decision as to the validity of the plea to the confirming officer, who should act as if the plea has been over-ruled.

**52. General plea of “guilty” or “not guilty”.**—(1) If no special plea to the general jurisdiction of the court is offered, or if such plea being offered, is overruled, or is dealt with by a special decision under sub-rule (4) of rule 51, the accused person’s plea “Guilty” or “Not guilty” (or if he refuses to plead, or does not plead intelligibly either one or other a plea of “Not guilty”) shall be recorded on each charge.

(2) If an accused person pleads “Guilty”, that plea shall be recorded as the finding of the court; but before it is recorded, the presiding officer or judge advocate on behalf of the court, shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence that the accused ought to plead “Not guilty”.

[(2A) Where an accused pleads Guilty, such plea and the factum of compliance of sub-rule (2) of this rule, shall be recorded by the court in the following manner :—

Before recording the plea of Guilty of the accused, the court explained to the accused the meaning of the charge(s) to which he had pleaded Guilty and ascertained that the accused had understood the nature of the charge(s) to which he had pleaded Guilty. The court also informed the accused the general effect of the plea and the difference in procedure, which will be followed consequent to the said plea. The court having satisfied itself that the accused understands the charge(s) and the effect of his plea of Guilty accepts and records the same. The provisions of rule 52 (2) are thus complied with.<sup>1</sup>

(3) Where an accused person pleads “Guilty” to the first of two or more charges laid in the alternative, the prosecutor may, after sub-rule (2) has been complied with by the court and before the accused is arraigned on the alternative charge or charges, withdraw such alternative charge or charges without requiring the accused to plead thereto and a record to that effect shall be made upon the proceedings of the court.

(4) A plea of “Guilty” shall not be accepted in cases where the accused is liable, if convicted to be sentenced to death, and where such plea is offered, a plea of “Not Guilty” shall be recorded and the trial shall proceed accordingly.

#### NOTES

1. If the accused pleads in some language not understood by the court, or inarticulately, he will not have pleaded intelligibly, and a plea of “Not guilty” will be entered.

2. Sub-rule (2) is qualified by sub-rule (4).

3. The object of sub-rule (2) is to prevent the accused from pleading guilty under a misapprehension; e.g., a man charged with wilfully injuring Government property may, under a misapprehension, plead guilty because the property has been actually injured, though not wilfully; or a man charged with receiving property, knowing it to have been stolen may, under a misapprehension, plead “guilty” because the property was in fact stolen, though when he received it, he did not know it to have been stolen. So again, on a charge for desertion, the plea “Guilty, but I intended to return” amounts to a plea of “Not guilty”, as the intention not to return is generally an essential element in the offence of desertion. In such cases the presiding officer must explain to the accused that he must plead “Not guilty”.

4. A plea of “Guilty” is to be taken to the extent to which it is pleaded. Thus a sepoy arraigned upon a charge of losing by neglect a number of articles, who pleads guilty in respect of some of those articles only, must be taken to have offered a “qualified” plea of guilty. The court may accept such a qualified plea of guilty, if it is satisfied of the justice of such course and if the concurrence of the convening officer is signified by the prosecutor, and come to a special finding under AR 62 (4) and (5) subject to the exceptions in relation to the articles to which he has not pleaded guilty, see AR 62 (9).

5. If the accused pleads guilty, a statement that the requirements of AR 52 (2) have been complied with must be recorded in terms of AR 52 (2A).

6. It must be recollected that there is nothing untrue in a person pleading not guilty even though he committed the offence, as the plea merely amounts to a claim, which he is entitled to make, that the charge against him shall be formally proved. Indeed; where the accused, while admitting the offence, wishes to show that it was committed under circumstances of great provocation and does not deserve severe punishment, he must plead ‘Not guilty’ if he wishes to prove the existence of such provocation out of the mouth of witnesses for the prosecution, who would not be called to give evidence if he pleaded ‘Guilty’; (see, however, AR 54 (7) as to the power of the court).

7. As to procedure where it appears at a later stage of the proceeding that the plea of guilty was offered under a misapprehension. see AR 54 (5).

8. If the prosecutor adopts the procedure provided by sub-rule (3), the accused will not be entitled to a verdict on the alternative charges, as he will not have been arraigned upon them. The convening officer must take care that the most serious of two or more alternative charges are placed first in the charge-sheet. As to the procedure to be followed in other cases where there are alternative charges, see AR 54 (1).

9. Sub-rule (4) is intended to ensure that a person charged with an offence for which death penalty can be awarded shall not be convicted without a full trial.

**53. Plea in bar.**—(1) The accused, at the time of his general plea of “Guilty” or “Not Guilty” to a charge for an offence, may offer a plea in bar of trial on the ground that—

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<sup>1</sup> Inserted by SRO 17 (E), dated 6th December, 1993

- (a) he has been previously convicted or acquitted of the offence by a competent criminal court or by a court-martial, or has been dealt with summarily under sections 80, 83, 84 and 85, as the case may be, for the offence, or that a charge in respect of the offence has been dismissed as provided in sub-rule (2) of rule 22; or
- (b) the offence has been pardoned or condoned by competent military authority; or
- (c) [the period of limitation for trial as laid down in section 122 has expired]<sup>1</sup>

(2) If he offers such plea in bar, the court shall record it as well as his general plea, and if it considers that any fact or facts stated by him are sufficient to support the plea in bar, it shall receive any evidence offered, and hear any address made by or on behalf of the accused and the prosecutor in reference to the plea.

(3) If the court finds that the plea in bar is proved, it shall record its finding, and notify it to the confirming authority, and shall either adjourn, or if there is any other charge against the accused, whether in the same or in a different charge-sheet, which is not affected by the plea in bar, may proceed with the trial of the accused on that charge.

(4) If the finding that the plea in bar is proved is not confirmed, the court may be re-assembled by the confirming authority, and proceed as if the plea had been found not proved.

(5) If the court finds that the plea in bar is not proved, it shall proceed with the trial, and the said findings shall be subject to confirmation like any other finding of the court.

#### NOTES

1. AA provides that a man shall not be liable to trial for an offence, of which he has been convicted or acquitted by a court-martial or by a criminal court, or for which he has been dealt with summarily (AA.s. 121), or which was committed more than three years before the date of his trial to be computed in accordance with AA.s. 122 (1), unless the offence was mutiny, desertion or fraudulent enrolment. Mutiny or desertion on active service, may be tried at any time. Desertion at other times or fraudulent enrolment is not to be tried, if the offender, not being an officer, has served for 3 years subsequently in an exemplary manner in any portion of regular Army (AA.s. 122).

2. The accused may also offer a plea in bar on the ground that a charge in respect of the offence has been dismissed as provided in AR 22 (2), i.e., that he has been acquitted, or the offence has been condoned, by his CO.

3. It has long been recognised as a custom of the service that a military offence can be condoned. For the purpose of barring a trial condonation means such conduct on the part of a competent authority i.e., an authority having power to determine that the charge should not be proceeded with-as is inconsistent with subsequently trying the offender, and as would make it inequitable to do so; it must be a deliberate and intentional act, done with full knowledge of all material facts. If, with full knowledge of the facts, competent authority removes an officer, or allows him to resign, he should not afterwards be tried by court-martial for his offence.

4. The evidence on the plea is to be taken on oath or affirmation.

5. If the finding on the plea, where the court allows it is confirmed, it amounts to an acquittal and is final. It must be noted that the finding of the court upon a plea in bar of trial whether in favour of or against the plea is subject to confirmation.

**54. Procedure after plea of “Guilty”.**—(1) Upon the record of the plea of “Guilty”, if there are other charges in the same charge-sheet to which the plea is “Not Guilty”, the trial shall first proceed with respect to the latter charges, and after the finding on those charges, shall proceed with the charges on which a plea of “Guilty” has been entered, but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded “Guilty” to any charge or may subject to sub-rule (2), instead of trying him, record a finding of “Guilty” upon any one of the alternative charges to which he has pleaded “Guilty” and a finding of “Not Guilty” upon all the other alternative charges.

(2) Where alternative charges are preferred and the accused pleads “Not Guilty” to the charge which alleges the more serious offence and “Guilty” to the other, the court shall try him as if he had pleaded “Not guilty” to all the charges.

<sup>1</sup> Subs by SRO 17 (E), dated 6th December, 1993

(3) After the record of the plea of “Guilty” on a charge (if the trial does not proceed on any other charges) the court shall receive any statement which the accused desires to make in reference to the charge, and shall read the summary [ ]<sup>1</sup> of evidence, and annex it to the proceedings or if there is no such summary [ ]<sup>1</sup> shall take and record sufficient evidence to enable it to determine the sentence and the confirming officer to know all the circumstances connected with the offence. This evidence shall be taken in the manner provided in these rules in the case of plea of “Not Guilty”.

(4) After evidence has been so taken, or the summary [ ]<sup>1</sup> of evidence has been read, as the case may be, the accused may make a statement in mitigation of punishment, and may call witnesses as to his character.

(5) If from the statement of the accused or from the summary [ ]<sup>1</sup> of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of “Guilty”, the court shall alter the record and enter a plea of “Not Guilty”, and proceed with the trial accordingly.

(6) If a plea of “Guilty” is recorded, and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under sub-rule (3) and (4) shall take place when the findings on the other charges in the same charge-sheet are recorded.

(7) When the accused states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same.

#### NOTES

1. An accused person cannot be found guilty upon more than one of two or more charges laid in the alternative, even if conviction upon one charge necessarily connotes guilt upon the alternative charge or charges. See AR 62 (7).

2. Where two alternative charges are preferred and the accused pleads “Not guilty” to the charge which alleges the more serious offence and “Guilty” to the other, the court should try him as provided by sub-rule (2), as if he has pleaded “Not guilty” to both charges. Having regard to AR 52(3), the most serious of two or more, alternative charges should always be placed first in a charge-sheet.

3. For procedure when statement made by the accused with reference to the charge is inconsistent with his plea; see notes 5 and 6.

4. The accused will always be asked, in case of a plea of “Guilty”, whether he desires to call witness to character.

5. The statement referred to in sub-rule (5) includes a statement made by the accused under sub-rule (3) in reference to the charge, as well as a statement made in mitigation under sub-rule (4).

6. The following examples are given of cases in which a plea of “Guilty” should be altered to a plea of “Not guilty” under sub-rule (5) : —

- (a) Sepoy A, charged with desertion (not being desertion to avoid a particular service), states “I always meant to come back”.
- (b) Sepoy B, charged with using criminal force to his superior officer, states, “I only did it to defend myself after he had struck me”.
- (c) Sepoy C, is charged with sleeping upon his post when a sentry. He makes no Statement with reference to the charge. On the reading of the summary of evidence, it is found that all the witnesses stated that Sepoy C was beyond the confines of his post when found asleep.
- (d) Naik D is charged with disobeying a lawful command given by Naik E, his superior officer, and makes no statement with reference to the charge. He calls a witness as to character, who states incidentally that Naik E is junior to Naik D. In this case the action of the court in altering the plea of the accused would be founded upon the words “or otherwise” in sub-rule (5).

7. The test to be applied in all such cases is not whether the court believes the statement, but whether, if the statement was true, it would be a valid defence to the charge. In doubtful cases, the plea of “Guilty” should be altered to a plea of “Not guilty”.

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<sup>1</sup> Omitted by SRO 17 (E), dated 6th December, 1993

8. If the court fails to act under the provisions of sub-rule (5), the confirming officer should refuse confirmation and can order a new trial. If he confirms, the finding will be set aside.

9. Where the accused alleges provocation for the offence, it may be desirable to record a plea of "Not guilty"; see note 6 to AR 52.

10. In any case where the court is empowered to come to a special finding under the provisions of AA.s. 139 or AR 62(4) and (5), the court may accept a qualified plea of guilty in respect of an offence; see AR 62(9).

11. Although under sub-rule (7) the permission of the court is required to enable the accused to call witnesses in extenuation of the offence, and consequent mitigation of punishment, such permission should always be given.

12. For procedure in case of joint trials where one accused pleads 'Guilty' and the other 'Not guilty', see note 4 to AR 35.

**55. Withdrawal of plea of "Not Guilty" subject to compliance with sub-rules (2) and (4) of Rule 52.**—The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not Guilty" and plead "Guilty", and in such case the court will at once, subject to a compliance with sub-rules (2) and (4) of rule 52, record a plea and finding of "Guilty" and shall so far as is necessary, proceed in manner directed by rule 54.

#### NOTE

If the accused proposes to withdraw his plea of 'Not guilty', the court must inform him in terms of AR 52(2A) of the general effect of his withdrawal, and of the difference in the procedure, in the same manner as if he pleaded guilty under AR 52.

**56. Plea of "Not Guilty", application for adjournment, and case for the prosecution.**—After the plea of "Not Guilty" to any charge is recorded, the trial shall proceed as follows, that is to say:—

- (1) the court shall ask the accused whether he wishes to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that he has been prejudiced thereby or on the ground that he has not had sufficient opportunity for preparing his defence, and shall record his answer;
- (2) if the accused shall make any such application, the court shall hear any statement of evidence which he may desire to adduce in support thereof, and any statement of the prosecutor or evidence in answer thereto; and if it shall appear to the court that the accused has been prejudiced by any non-compliance with any of such rules relating to procedure or that he has not had sufficient opportunity of preparing his defence, it may grant such adjournment as may appear to it in the circumstances to be proper;
- (3) the prosecutor may, if he desires and shall, if so required by the court make an opening address, and shall state therein the substance of the charge against the accused and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into any unnecessary detail;
- (4) the evidence for the prosecution shall then be taken;
- (5) if it should be necessary for the prosecutor to give evidence for the prosecution on the facts of the case, he shall give it after the delivery of his address (if any), and he must be sworn or affirmed, as the case may be, and give his evidence in detail; and
- (6) he may be cross-examined by or on behalf of the accused and afterwards may make any statement which might be made by a witness on re-examination.

#### NOTES

1. As to the rights of the accused to prepare his defence, see AR 33 and notes thereto. As to warning of accused for trial see AR 34 and notes thereto.

2. For adjournment see AR 82. The court must adjourn if it appears to it that the accused is likely to be prejudiced by non-compliance with any of the rules relating to procedure before trial or that he did not have sufficient time to prepare his defence.

3. As to the duties of the prosecutor see. AR 77 and notes, and memoranda on page 312 to 314.

4. In case of complexity, the prosecutor should always make an opening address, so that the members of the court may be enabled to understand the general nature of the allegations. He must be careful to refrain from making any assertions which he does not propose to substantiate by evidence. The address of the prosecutor may be in writing, in such a case it should be read by him and handed to the court for attachment to the proceedings. If the address is made orally, see AR 92(4).

5. For general provisions as to witnesses and evidence, see ARs 134 to 143. The evidence will be taken by question and answer, or the witness may be asked to tell his own story, questions being subsequently asked to make good any omissions, see AR 92 (2).

It is the duty of the prosecutor to conduct the examination of the witnesses for the prosecution and to see that all facts essential to constitute the offence are proved; e.g., on a charge laid under AA.s. 56(a) for making a false accusation against Havildar A, it must be proved :—

- (a) that the accused made the accusation in question against Havildar A;
- (b) that it was false;
- (c) that the accused made it knowing it to be false.

The prosecutor must be careful, in examining his witnesses, to avoid putting leading or suggestive questions.

6. Documentary evidence will be read by the presiding officer or JA; it will then be marked with a distinguishing figures and attached to the proceedings. As a rule, it will be sufficient to attach copies of documents which must, however, be compared with the originals by the court and certified under the hand of the presiding officer to be true copies; see note 3 to AR 67.

7. For the duties of the presiding officer, see AR 76.

8. If the same person gives evidence in more than one case tried by the same court, he must be sworn (or affirmed) as a witness in each case, even if all such cases are tried on a single day.

9. The prosecutor should never give evidence for the prosecution, unless it be evidence of a merely formal nature, or for the purpose of producing documents which are in his possession. In exceptional cases, however (e.g., active service), no prosecutor may be available except an officer who is a material witness as to the facts for the prosecution. In such a case the prosecutor must give his evidence before any other witness for the prosecution, and must not, after delivering an address, be allowed to answer generally as to the truth of the statements contained in such address.

10. When counsel appears on behalf of the prosecutor, sub-rule (5) and (6) of this rule do not apply.

11. As to questions by the court see ARs 142 and 143.

**[57. Plea of no case.—**(1) At the close of the case for the prosecution, the accused may offer a plea that the evidence given on behalf of the prosecution, in respect of any one or more charges, has not established a prima-facie case against him and that he should not, therefore be called upon to make his defence to that charge or charges.

(2) Where the accused takes such a plea, the prosecutor may address the court in answer thereto and the accused may reply.

(3) The court shall consider the plea in closed court and shall not allow the plea unless satisfied that :—

- (a) the prosecution has not established a prima-facie case on the charge or charges as laid; and
- (b) it is not open to it on the evidence adduced to make a special finding either under section 139 or sub-rule (4) of rule 62.

(4) If the court allows the plea, it shall record a finding of “Not Guilty” on the charge or charges, to which the plea relates, and shall announce the finding forthwith in open court as subject to confirmation.

(5) If the court over rules the plea, it shall proceed with the trial.

(6) If the court has any doubt as to the validity of the plea, it may refer the matter to the convening authority, and adjourn for that purpose.

(7) The court may, of its own motion, after the close of the case for the prosecution, and after hearing the prosecutor find the accused “Not Guilty” of the charge, and announce the finding forthwith in open court as subject to confirmation.

(8) The court shall record brief reasons while arriving at the finding on the plea, in accordance with sub-rule (1) of rule 62.<sup>1</sup>

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<sup>1</sup> Sub vide SRO 17 (E), dated 6th December, 1993



## NOTE

It is open to the accused, his counsel or defending officer, at the close of the case for the prosecution, to submit that the evidence given for the prosecution has not established a prima facie case against him and that he should not, therefore, be called upon for his defence. The court will consider this submission in closed court and, if it is satisfied that it is well founded, must acquit the accused. The submission may be made in respect of any one or more charges in a charge-sheet.

**[58. Examination of the accused and defence witnesses.—**(1) (a) In every trial, for the purpose of enabling the accused personally to explain any circumstances appearing in evidence against him, the court or the Judge Advocate:—

- (i) may at any stage, without previously warning the accused, put such questions to him as considers necessary;
- (ii) shall, after the close of the case for the prosecution and before he is called on for his defence, question him generally on the case.
- (b) No oath shall be administered to the accused when he is examined under clause (a).
- (c) The accused shall not render himself liable to punishment by refusing to answer questions referred in clause (a) above, or by giving answers to them which he knows not to be true.

(2) After the close of the case for the prosecution, the presiding officer or the judge advocate, if any, shall explain to the accused that he may make an unsworn statement, orally or in writing, giving his account of the subject of the charge(s) against him or if he wishes, he may give evidence as a witness, on oath or affirmation, in disproof of the charge (s) against him or any person charged together with him at the same trial:—

Provided that —

- (a) he shall not be called as a witness except on his own request in writing;
- (b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the court or give rise to any presumption against himself or any person charged together with him at the same trial;
- (c) if he gives evidence on oath or affirmation, he shall be examined as first witness for defence and shall be liable to be cross-examined by the prosecutor and to be questioned by the court.

(3) The accused may then call his witnesses including, if he so desires, any witnesses as to character. If the accused intends to call witnesses as to the facts of the case other than himself, he may make an opening address before the evidence for defence is given.<sup>1</sup>

## NOTES

1. The question as to the calling of witnesses will be put by the JA, or if there is none, by the presiding officer.

2. The presiding officer or the JA may question the accused for the purpose of enabling him (accused) to explain any circumstance appearing in his statement or in the evidence against him. Such questions may be put even though the accused has made no statement. The questions and the accused's answers thereto should, as far as possible, be recorded verbatim.

3. The questions should not be put in the way of cross-examination or for testing his defence or for supplementing the prosecution case. The accused does not render himself liable to punishment for refusing to answer such questions or giving answers to them which he knows not to be true.

4. The accused has the privilege of making statements which are unsupported by evidence. Any statement of the facts, though not on oath, upon which the accused relies for his defence, must be taken into consideration by the court, who may draw its inferences from it. If made orally, it should be taken down verbatim, so far as it states facts which are within the personal knowledge of the accused and upon which he relies for his defence. If made in writing it shall be read and attached to the proceedings.

<sup>1</sup> Substituted by SRO 17(E), dated 6th December, 1993

5. The fact that the accused has stated that he does not intend to call any witnesses to the facts of the case does not prevent him from doing so before the evidence for the defence is completed if, for example, unexpected witnesses become available.

6. As to calling and recalling witnesses in reply see AR 143.

7. It is the duty of counsel for the defence or defending officer (if any) or the accused to conduct the examination of the witnesses for the defence.

8. As to counsel and defending officer, see ARs 95 to 101.

9. The utmost liberty consistent with the interests of parties not before the court and with the dignity of the court itself should be allowed to the accused in making his defence [see AR 77(3)], and the court should, if necessary, adjourn to allow him time for its preparation.

10. For procedure when two or more persons are tried together, see AR 78.

**[59. Closing Addresses.]**—After the examination of the witnesses, the prosecutor may make a closing address and the accused or his counsel or the defending officer, as the case may be, shall be entitled to reply;

Provided that where any point of law is raised by the accused, the prosecutor may, with the permission of the court, make his submission with regard to that point.<sup>1</sup>

#### NOTES

1. The prosecutor's address may be in writing, and in such a case it should be read by the prosecutor and handed to the court for attachment to the proceedings. If the address is made orally; see AR 92(4).

2. Counsel for the defence may not state as a fact any matter which has not been proved in evidence (AR 100) and the same restriction is placed upon a defending officer (AR 95(3)).

3. In his closing address, the prosecutor must confine his remarks to the evidence given by the witnesses for the prosecution and defence; he must not strain or overstate that view of the facts which it is his duty to present to the court. He must not state any new fact which has not been given in evidence. Any deviation in these respects on the part of the prosecutor, or any want of moderation, may lead to the setting aside of the proceedings; if it appears that injustice has been done thereby to the accused. It is the duty of the court, as far as possible, to prevent the prosecutor from transgressing in any of these respects.

**59-A.** [Omitted]<sup>2</sup>

**60. Summing up by the judge-advocate.**—(1) The judge-advocate (if any) shall sum up in open court the evidence and advise the court upon the law relating to the case.

(2) After the summing up of the judge-advocate, no other address shall be allowed.

#### NOTES

1. A summing up by JA is obligatory under sub-rule (1). It may be given orally or in writing; see AR 144; but in practice it should invariably be in writing.

In his summing up the JA should explain the charges and the law relating to them, the issues raised by the charges and briefly recapitulate the evidence on such issues. He must be careful not to indicate to the court any opinion he may have formed regarding the facts of the case.

2. For the powers and duties of JA, see AR 105 and notes thereto.

#### Finding and sentence

**61. Consideration of finding.**—(1) The court shall deliberate on its finding in closed court in the presence of the judge-advocate.

<sup>1</sup> Subs by SRO 17 (E), dated 6th December, 1993

<sup>2</sup> Omitted by SRO 17 (E), dated 6th December, 1993

(2) The opinion of each member of the court as to the finding shall be given by word of mouth on each charge separately.

#### NOTES

1. For sitting in closed court see AR 80.

2. The presiding officer or the judge advocate (if any) should initiate the deliberations of the court by a statement of the questions to be considered and the order in which they should be considered. If, for example, the charge is laid under AA.s. 41(2), he will ask the members to discuss the bearing of the evidence upon the following questions;

(a) was a command given? (b) was it a lawful command ? (c) was it given by the superior officer of the accused? (d) was it disobeyed by the accused? (e) did the accused know that the person giving the order was his superior officer?

Similarly, where the charge laid is under AA.s. 63, the questions to be considered should be:

(a) have the facts alleged in the particulars of the charge been proved in evidence? if they have,

(b) do such facts amount to an act (or omission) prejudicial to good order and military discipline?

3. If the court is doubtful whether the actual offence charged is proved or whether the particulars of the charge have been satisfactorily established in evidence, they must consider their powers of making a special finding, either under AA.s. 139 or under AR 62(4).

4. The members of courts-martial must remember that (a) it is a fundamental rule of criminal law followed in India that an accused person is presumed to be innocent until he has been proved to be guilty, and (b) that their finding must be based upon the evidence given before them. See AR 45 for form of oath/affirmation for members. Any statement made by the accused, even if not on oath must be carefully considered. Though not given on oath and not subject to the test of cross-examination, it will often be of value particularly if it is in any respect corroborated by evidence from other sources (see note 4 to AR 58).

5. At any time before the finding has been arrived at the court may be reopened to enable a witness to be called or recalled and examined by it through the presiding officer or JA, see AR 143(4).

6. As to form and record of finding, see AR 62.

7. The opinions of members must be given orally. As to taking opinions, see AR 87 and notes thereto.

**62. Form, record and announcement of finding.** —[(1) The finding on every charge upon which the accused is arraigned shall be recorded and, except as provided in these rules, shall be recorded as finding of ‘Guilty’ or ‘Not Guilty’. After recording the finding on each charge, the court shall give brief reasons in support thereof. The judge advocate or, if there is none, the presiding officer shall record or cause to be recorded such brief reasons in the proceedings. The above record shall be signed and dated by the presiding officer and the judge advocate, if any.]<sup>1</sup>

(2) Where the court is of opinion as regards any charge that the facts proved do not disclose the offence charged or any offence of which he might under the Act legally be found guilty on the charge as laid, the court shall acquit the accused of that charge.

(3) If the court doubts as regards any charge whether the facts proved show the accused to be guilty or not of the offence charged or of any offence of which he might under the Act legally be found guilty on the charge as laid, it may, before recording a finding on that charge, refer to the confirming authority for an opinion, setting out the facts which it finds to be proved, and may if necessary, adjourn for that purpose.

(4) Where the court is of opinion as regards any charge that the facts which it finds to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of “Not guilty”, record a special finding.

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<sup>1</sup> Subs by SRO 17 (E), dated 6th December, 1993

(5) The special finding may find the accused guilty on a charge subject to the statement of exceptions or variations specified therein.

(6) Where there are alternative charges, and the facts proved appear to the court not to constitute the offence mentioned in any of those alternative charges, the court shall record a finding of “Not Guilty” on that charge.

(7) The court shall not find the accused guilty on more than one of two or more charges laid down in the alternative, even if conviction upon the charge necessarily connotes guilty upon the alternative charge or charges.

(8) If the court thinks that the facts proved constitute one of the offences stated in two or more of the alternative charges, but doubts which of those offences the facts do at law constitute, it may, before recording a finding on those charges, refer to the confirming authority for an opinion, setting out the facts which it finds to be proved and stating that it doubts whether those facts constitute in law the offence stated in such one or other of the charges and may, if necessary, adjourn for that purpose.

(9) In any case where the court is empowered by section 139 to find the accused guilty of an offence other than that charged, or guilty of committing an offence in circumstances involving a less degree of punishment, or where it could, after hearing the evidence, have made a special finding of guilty subject to exceptions or variations in accordance with sub-rules (4) and (5) it may, if it is satisfied of the justice of such course, and if the concurrence of the convening officer is signified by the prosecutor, accept and record a plea of guilty of such other offences or of the offence as having been committed in circumstances involving such less degree of punishment or of the offence charged subject to such exceptions or variations:

Provided that failure to obtain the concurrence of the convening officer as aforesaid shall not invalidate the proceedings when confirmed notwithstanding such failure.

(10) The finding on each charge shall be announced forthwith in open court as subject to confirmation.

#### NOTES

1. Sub-rule (1) is applicable to all charges including alternative charges, except in those cases which fall within AR 52(3).

2. In the case of an acquittal on every charge the presiding officer must date and sign the proceedings. The JA, if any, must also sign; see AR 63.

3. Where a person is charged with dishonestly receiving property, knowing it to be stolen and the facts show, that although the property was in fact stolen the accused was unaware that it was stolen property, the court must acquit as provided by sub-rule (2) as the accused would not have committed the offence charged.

4. For special findings in respect of the statement of offence, see AA.s. 139.

5. Before referring to the confirming authority as provided under sub-rule (3), the Court must have arrived at a decision as to the facts which it finds to be proved and the opinion of the confirming authority will be sought as to whether, upon the facts so found to be proved, the accused can legally be found guilty. The court cannot refer to the confirming authority for any opinion as to the facts, as to which it is the sole judge. The reason for the reference should be recorded, The opinion of the confirming officer should be read upon re-assembly of the court and attached to the proceedings.

6. The special finding referred to in sub-rule (4) relates only to the particulars of the charge and not to the statement of the offence, as to which see AA.s. 139 and notes. Before recording a special finding under this sub-rule, the court must be satisfied that the facts which it finds to be proved, subject to certain exceptions and variations, amount to the substance of the charge; otherwise they must acquit; e.g.,

- (a) On a charge against a sepoy for losing by neglect a great coat and a waist belt; the court may properly find the accused “guilty of the charge except that he did not lose a waist belt, but it cannot legally find him “guilty of the charge except that he made away with and did not lose the articles in question”.
- (b) An immaterial variation of date may be made by special finding, but in case of desertion or absence without leave, the substitution of a date which would have the effect of lengthening the period of absence alleged in the charge, would not be permissible.

- (c) On a charge of using criminal force to his superior officer (Havildar A) by striking him with his fist in the face, the court could properly except the words, "in the face", but it cannot make a special finding substituting Havildar B for Havildar A.
- (d) On a charge of dishonestly misappropriating Rs.100, a special finding that the sum misappropriated was Rs. 50 would be permissible; but a special finding omitting from the particulars the word "dishonestly" would tantamount to an acquittal.

7. For general procedure in respect of sub-rule (8) see note 5 above.

8. Sub-rule (9) provides that where the court is empowered to come to a special finding under the provisions of A.A.s. 139 or AR 62 sub-rules (4) and (5), it may accept a qualified plea of guilty, if it is satisfied of the justice of such course and the concurrence of the convening officer is signified by the prosecutor and record a special finding. For example, if an accused charged with desertion pleads guilty to absence without leave, or if an accused charged with losing by neglect a number of articles pleads guilty in respect of some of those articles only, the court may accept such qualified plea and record a special finding accordingly.

**63. Procedure on acquittal.**— If the finding on all the charges is "Not Guilty", the presiding officer shall date and sign the finding and such signature shall authenticate the whole of the proceedings, and the proceedings upon being signed by the judge-advocate (if any) shall be at once transmitted for confirmation.

#### NOTE

Even the finding of "Not guilty" by a GCM, DCM or SGCM requires confirmation and is not valid until so confirmed; see AA.s. 153.

**64. Procedure on conviction.**— (1) If the finding on any charge is "Guilty" then, for the guidance of the court in determining its sentence, and of the confirming authority in considering the sentence, the court, before deliberating on its sentence, shall, whenever possible, take evidence of and record the general character, age, service, rank and any recognised acts of gallantry or distinguished conduct of the accused, any previous convictions of the accused either by a court-martial or a criminal court, any previous punishments awarded to him by an officer exercising authority under sections 80, 83, 84 or 85, as the case may be, the length of time he has been in arrest or in confinement on any previous sentence, and any military decoration, or military reward, of which he may be in possession or to which he is entitled.

(2) Evidence on the above matters may be given by a witness verifying a statement which contains a summary of the entries in the regimental books respecting the accused and identifying the accused as the person referred to in that summary.

(3) The accused may cross-examine any such witness, and may call witnesses to rebut such evidence; and if the accused so requests, the regimental books, or a duly certified copy of the material entries therein, shall be produced; and if the accused alleges that the summary is in any respect not in accordance with the regimental books, or such certified copy, as the case may be, the court shall compare the summary with those books or copy, and if it finds it is not in accordance there-with, shall cause the summary to be corrected.

(4) When all the evidence on the above matters has been given, the accused may address the court thereon and in mitigation of punishment.

#### NOTES

1. See AA.s. 144 and notes thereto.
2. The court will always take evidence as to character, unless the circumstances render it impracticable to do so, in which case, it will record upon the proceedings the reasons for such impracticability.
3. Evidence upon the matters referred to in this rule should not be given by a member of the court.
4. The court cannot take oral evidence that the accused is of bad character; this should be proved in the manner shown in sub-rule (2); but oral evidence of good character is always permissible. If the accused calls witnesses as to his good character, they may be cross-examined by the prosecutor with a view to testing their veracity and thereby indirectly bringing out evidence of bad character. Witnesses as to character can also be called during the hearing of the case for the defence and before the finding.
5. The court will also consider the length of time during which the accused has been in arrest awaiting trial upon the present charge or charges.

6. If by reason of the nature of the service of the accused, the finding of the court renders him liable to any exceptional punishment in addition to that to be awarded by the sentence of the court, the prosecutor should call the attention of the court to the fact, and the court should enquire into the nature and amount of such additional punishment.

7. For definition of "Military reward", see AA.s. 3(xiv).

8. Previous conviction of the accused will be proved by the production of a verbatim extract from the regimental books (IAFD-905) duly completed by the officer-in-charge of these books (see note 10 below and AA.s. 142(3) and (4)). The term 'regimental books' includes departmental books of the same nature as those maintained by Corps, e.g., sheet roll or a court-martial book, but does not include departmental business books. If the accused challenges the correctness of the regimental books, see sub-rule (3). If there is any reason to doubt the correctness of the entry in the regimental books of a civil conviction, such conviction may be proved by an extract certified by the person having the custody of the records of the court in which the accused was convicted.

9. The witness producing the extract from the regimental books and the statement as to age, service, rank, etc., of the accused should be the adjutant or some other officer, and there is no objection to the prosecutor giving such evidence (see note to AR 56). He must be sworn as any other witness and may be cross-examined by the accused and questioned by the court.

10. The copy of the material entries in the regimental book must be certified by the officer having custody of the original book (AA.s. 142(4)); custody includes temporary custody for the purpose of the trial.

**65. Sentence.**— The court shall award a single sentence in respect of all the offences of which the accused is found guilty and such sentence shall be deemed to be awarded in respect of the offence in each charge in respect of which it can be legally given and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given.

#### NOTES

1. This rule applies whether the charges on which the offender has been tried are contained in one or several charge-sheets.

2. As to postponement of sentence where several persons are tried separately for offences arising out of the same transaction; see AR 89(4).

3. The sentence must be a sentence authorised by the AA (see AA ss. 71 to 76) e.g., a court-martial cannot award a sentence of confinement to lines, or sentence an offender to restore stolen property. But a court-martial may under AA.s. 151(1) make a separate order for the disposal of property. Such an order should be recorded below the signature of the presiding officer to the sentence and should be separately dated and signed by the presiding officer.

4. For procedure in voting upon the sentence, see AR 87 and notes thereto.

5. The object of the later portion of this rule is to prevent legal objection to the validity of the sentence. If, for example, an offender has been found guilty by a GCM on a charge of desertion on active service, and also upon a charge under A.A.s. 54(a) for making away with arms and equipment, a sentence of death in respect of the first charge will be valid, although a sentence of 10 years imprisonment is the maximum sentence which could have been awarded upon the second charge.

6. Sentence, unless for one or more years exactly, should if for one month or upwards, be recorded in months. Sentence consisting partly of months and partly of days should be recorded in months and days. A month means a calendar month.

7. Even if the accused is considered by the medical officer, who examines him before trial, unfit to undergo rigorous imprisonment, the court can sentence him to it as it is the duty of the medical officer of the prison, or place of military custody, to decide what severity of labour he can undergo.

8. Sentence of simple imprisonment is inexpedient and inconvenient of execution.

**66. Recommendation to mercy.**—(1) If the court makes a recommendation to mercy, it shall give its reasons for its recommendation.

(2) The number of opinions by which the recommendation to mercy mentioned in this rule, or any question relative thereto, is adopted or rejected, may be entered in the proceedings.

#### NOTES

1. A recommendation to mercy will be appended to the sentence; it forms part of the proceedings of the court.

2. In view of the discretion of the court in the matter of awarding sentence, a recommendation to mercy will be exceptional. It will usually be made only when the court, though unwilling to pass a lenient sentence lest the offence should be considered as venial one, thinks that, owing to the offender's character or other exceptional circumstances, he should not suffer the full penalty which the offence would ordinarily demand. As a rule the court will be able to adjust the sentence according to what, in its judgement, the



offender should suffer having regard to the attendant circumstances. It is indisputable that offences are more effectually prevented by certainty than by severity of punishment.

3. As a recommendation to mercy is part of the proceedings, any expression of opinion in it in relation to the finding must be read with, and as part of the finding. Accordingly, where in a recommendation to mercy a court expresses an opinion inconsistent with the guilt of the person under sentence, e.g., where the charge is for striking a superior, and the court states its opinion that the accused "did not intend to strike", it must be treated as an acquittal, the intent being an element of the offence.

4. Recommendation to mercy is a matter which the court has to decide under AR 87 (1).

**67. Announcement of sentence and signing and transmission of proceedings.—(1)**

The sentence together with any recommendation to mercy and the reasons for any such recommendation will be announced forthwith in open court. The sentence will be announced as subject to confirmation.

(2) Upon the court awarding the sentence, the presiding officer shall date and sign the sentence and such signature shall authenticate the whole of the proceedings and the proceedings upon being signed by the Judge-Advocate (if any), shall at once be transmitted for confirmation.

**NOTES**

I. It is essential that the date of the sentence should be inserted as under AA.s. 167 a term of imprisonment is reckoned to commence on the day on which the sentence and proceedings were signed by the presiding officer. When, however, the presiding officer after recording the finding and sentence, omits to either sign or date the proceedings, he can, even after confirmation, sign them and date his signature as of the true date of the decision. The proceedings must not be signed by the members of the court other than the presiding officer.

2. The signature authenticates the whole of the proceedings, including the documentary evidence produced at the trial.

3. When an original document is produced in evidence, it will rarely be necessary to annex it to the proceedings. A certified copy should be produced to the court, together with the original, the former being attached to the proceedings, and the latter returned to its proper custodian. Documents, the actual appearance of which is material to the case (e.g., alleged forgeries), shall always be attached in original.

**Confirmation and Revision**

**[68. Revision.—(1)** Where the finding is sent back for revision under section 160, the court shall re-assemble in open court, the revision order shall be read, and if the court is directed to take fresh evidence, such evidence shall also be taken in open court.

(2) Except where the court is directed to take fresh evidence, no fresh evidence shall be adduced.

(3) The court may, on a request from the prosecutor, in the interest of justice, allow a witness to be called or re-called for the purpose of rebutting any material statement made by a witness for the defence during revision.

(4) After the revision order has been read in open court, whether the revision is of finding or sentence and the evidence, if any, in accordance with sub-rules (1), (2) and (3) has been taken, the prosecutor and the accused shall be given a further opportunity to address the court in the order as laid down in rule 59. If necessary, the judge-advocate, if any, may sum up the (additional) evidence and advise the court upon the law relating to the case. The court shall then deliberate on its finding or the sentence, as the case may be, in closed court.

(5) Where the finding is sent back for revision and the court does not adhere to its former finding, it shall revoke the finding and sentence, and record the new finding, in the manner laid down in rule 62, and if such new finding involves a sentence, pass sentence afresh after complying with rule 64.

(6) Where the sentence alone is sent back for revision, the court shall not revise the finding.

(7) After the revision, the presiding officer shall date and sign the decision of the court, and the proceedings, upon being signed by the judge-advocate, if any, shall at once be transmitted for confirmation.<sup>1</sup>

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<sup>1</sup> Subs by SRO 17 (E), dated 6th December, 1993

## NOTES

1. Under the military law in force, a finding of acquittal can be revised and the accused found guilty and sentenced, a sentence can be increased on revision, the fresh evidence can (if so ordered) be taken on revision.

2. A court cannot be re-assembled more than once for revision, whether of finding or of sentence.

3. The object of revision will generally be to cure defects in the finding or sentence, or both. The confirming officer, however, by partial confirmation or by exercising his powers under AR 72 (1) or 73 can often correct mistakes made by the court, and thus obviate the inconvenience of reassembling the court for revision.

4. If the sentence originally awarded by the court is wholly illegal, e.g., a sentence of rigorous imprisonment awarded to a WO by a DCM, or a sentence of reduction to ranks awarded to a lance-naik, or a sentence of confinement to lines awarded to a sepoy, it is null (see note 2 to AR 73), and the court, on revision, may award any legal sentence; in such a case the confirming officer cannot pass a valid sentence; but see AA.s. 163 for alteration of sentence after confirmation.

5. Where a special finding should have been recorded under AA.s. 139 or AR 62(4), the finding should be sent back for revision. A confirming officer cannot substitute a special finding on any charge for the court's finding; but see AA.s. 163 for substitution of a finding after confirmation.

6. If a court brings in a finding of "not guilty" against the weight of evidence, the court may be re-assembled and the confirming officer may give his views on the evidence, directing the attention of the court to any special points which it appears to have failed, to appreciate.

7. A finding of insanity may also, be sent back for revision.

8. A confirming officer cannot send back part of a finding or sentence; if he thinks that a part only requires revision, he must return the whole, pointing out the part which, in his opinion, requires revision.

9. The court should be re-assembled as soon as practicable. If the court upon reassembly is reduced, by death or otherwise, below the legal minimum [see AA.s. 160(2) and (3)], it cannot proceed with the revision, and the proceedings must be returned to the confirming authority. In such a case, as no revision has taken place, the original finding and sentence will stand and will be dealt with by the confirming authority.

10. Under AA.s. 167, the term of imprisonment commences on the date of original sentence. Also see notes to AA.s. 167.

11. [to be omitted].

12. If the revised finding is an acquittal or a finding of insanity, no sentence is involved. If a court, on revision revokes its original finding on any charge, the original sentence, if any, automatically falls to the ground and, if the revised finding entails a sentence, the court must pass sentence afresh; if the court omits to do so the accused is not legally under any sentence and the confirming officer may return the proceedings with directions to the court to complete the revision and pass sentence. This will not be a second revision, which is prohibited by AA.s. 160(1).

13. If the original finding was acquittal and the revised finding is "Guilty", the court will (whether ordered to take fresh evidence or not) proceed as directed by AR 64. The evidence referred to in sub-rule (1) is evidence of the facts relating to the charge, and must not be taken on revision unless specially ordered as per AA.s. 160(1).

**69. Review of court-martial proceedings.**—The proceedings of a general court-martial shall be submitted by the judge-advocate at the trial for review to the deputy or assistant judge-advocate general of the command who shall then forward it to the confirming officer. The proceedings of a district court-martial shall be sent by the presiding officer or the judge-advocate direct to the confirming officer who must, in all cases, where the sentence is dismissal or above, seek advice of the deputy or assistant judge-advocate general of the command before confirmation.

## NOTE

This rule provides for a statutory review of all GCM proceedings and in DCM proceedings where the sentence awarded is dismissal or above.

**70. Confirmation.**—Upon receiving the proceedings of a general or district court-martial, the confirming authority may confirm or refuse confirmation or, reserve confirmation for superior authority, and the confirmation, non-confirmation, or reservation shall be entered in and form part of the proceedings.

## NOTES

1. See AA.ss. 153 to 159 and ARs 72 to 74. As to confirmation of SGCM proceedings, see AA.s. 157 and AR 162.

2. The minute of reservation should be entered in the proceedings.
3. Sentence of death must be reserved for confirmation by the Central Government. See warrants A-2 and A-3 for confirmation of GCM proceedings and AA.s. 156 and notes thereto.
4. Confirmation is complete when proceedings are promulgated to the accused.

**71. Promulgation.**—The charge, finding, and sentence, and any recommendation to mercy shall, together with the confirmation or non-confirmation of the proceedings, be promulgated in such manner as the confirming authority may direct; and if no direction is given, according to the custom of the service. Until promulgation has been effected, confirmation is not complete and the finding and sentence shall not be held to have been confirmed until they have been promulgated.

#### NOTES

1. For the date from which a sentence of cashiering or dismissal takes effect, see AR 168.
2. In the absence of any direction by the confirming authority, the usual custom of the service as to promulgation will be followed, but a written notice to the offender of the charge, etc., will be sufficient promulgation under this rule. Also see Regs for the Army para 473.
3. As to committal to a civil prison or to military custody of persons sentenced to imprisonment, see AA.s. 169; as to action in exceptional cases, see AA.s. 171.
4. For forms of committal warrants, see Appendix IV, Part II to AR.
5. As to the suspension of sentences of imprisonment, see AA.ss. 182 to 190.

**72. Mitigation of sentence on partial confirmation.**— (1) Where a sentence has been awarded by a court-martial in respect of offences in several charges, and the confirming authority confirms the finding on some but not on all of such charges, that authority shall take into consideration the fact of such non-confirmation and shall, if it seems just, mitigate, remit, or commute the punishment awarded accordingly as it seems just, having regard to the offences in the charges in respect of the findings which are confirmed.

(2) Where a sentence has been awarded by a court-martial in respect of offences in several charges and has been confirmed, and anyone of such charges or the finding thereon is found to be invalid, the authority having power to mitigate, remit, or commute the punishment awarded by the sentence shall take into consideration the fact of such invalidity and if it seems just, mitigate, remit or commute the punishment awarded accordingly as it seems just, having regard to the offences in the charges on which the findings thereon are not invalid, and the punishment as so modified shall be as valid as if it had been originally awarded only in respect of those offences.

#### NOTES

1. As to the meaning of the terms mitigation, remission and commutation, see notes to AA.s. 158.
2. Where a sepoy has been convicted of (a) desertion on active service under AA.s. 38(1) and (b) of theft of Government property under AA.s. 52(a), and has been sentenced to rigorous imprisonment for 14 years; and the confirming officer confirms the finding on the second charge but not that on the first charge, which alone justified the sentence of 14 years rigorous imprisonment, he is bound under this rule to remit the sentence at least to rigorous imprisonment for 10 years, which is the maximum sentence under AA.s. 52 (a). If, however, the confirming officer confirms the finding of the first charge and not that on the second, he may mitigate or commute it to some less punishment, if he considers that a sentence of rigorous imprisonment for 14 years on the first charge alone is, in the circumstances, too severe.
3. Sub-rule (2) gives to the authority prescribed under AA.s. 179 similar powers to do after confirmation which under sub-rule (1) the confirming officer may do before confirmation. But it will be noted that the prescribed authority is only required to act under sub-rule (2) where anyone of the charges or the finding thereon, is found to be invalid and has been set aside. The prescribed authority derives the ordinary powers of mitigation etc., from AA.s. 179.
4. As to substitution of a valid for an invalid sentence, see AA.s. 163.

**73. Confirmation notwithstanding informality in or excess of punishment.**— If the sentence of a court-martial is informally expressed, the confirming authority may, in confirming the sentence, vary the form so that it shall be properly expressed; and if the punishment awarded by the sentence is in excess of the punishment authorised by law, the confirming authority may vary the sentence so that the sentence shall not be in excess of the punishment authorised by law; and the confirming authority may confirm the finding and the sentence, as so varied, of the court-martial.

## NOTES

1. The object of this rule is to prevent the proceedings of courts-martial from being rendered invalid when they cannot be sent back for revision without great inconvenience to the public service. It will not exonerate from blame the presiding officers and members of courts-martial who award sentences which are informal or in excess of their powers. If confirming officers decide to act under this rule, instead of ordering a revision of the sentence, they should call the attention of the members of the court to the informality or irregularity of the sentence.

2. The confirming authority cannot under this rule vary a sentence which is illegal in its character and therefore null e.g., a sentence of imprisonment awarded by a DCM to a WO or a sentence of reduction awarded to a lance-naik, or a sentence of confinement to lines awarded to a sepoy. In such cases the court must be reassembled for the purpose of passing a valid sentence.

**74. Member or prosecutor not to confirm proceedings.**—A member of a court-martial, or an officer who has acted as a prosecutor at a court-martial shall not confirm the finding or sentence of that court-martial and where such member or prosecutor becomes confirming officer, he shall refer the finding and the sentence of the court-martial to a superior authority competent to confirm the findings and sentences of the like description of court-martial.

## NOTE

If proceedings are confirmed in error by an officer not having power to confirm, his act and the subsequent promulgation are null and it is open to the proper authority to confirm them.

**Proceedings of General and District Court-Martial**

**75. Seating of members.**—The members of a court-martial shall take their seats according to their army rank.

**76. Responsibility of presiding officer.**—(1) The presiding officer is responsible for the trial being conducted in proper order and in accordance with the Act, rules made thereunder and in a manner befitting a court of justice.

(2) It is the duty of the presiding officer to see that justice is administered, that the accused has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a person under trial, or of his ignorance, or of his incapacity to examine or cross-examine witnesses or otherwise.

## NOTES

1. The court should always have at its disposal the AA, AR, Regs for the Army and any other official books or orders which are necessary for the purpose of its proceedings. For this purpose, the court-martial box containing books and publications as laid down in order issued from time to time will be made available to the Court.

2. The presiding officer should be careful to safeguard the dignity of the court and the solemnity of its proceedings.

3. If any person, other than the accused, interrupts the proceedings, he should ordinarily be excluded from the court. The court has, however, further powers under AR 150 for dealing with persons who interrupt its proceedings. (See also AA.s. 152 and notes thereto). The trial of a person cannot proceed in his absence, even though he interrupts the proceedings.

4. If the accused is not represented by counsel or defending officer, the presiding officer should assist him in putting forward his defence, and take care that he is not prejudiced by his inability to put proper questions to the witnesses or bring out clearly the points upon which he relies. If there is a JA, he has a similar duty [AR 105(7)] but the presence of a JA does not relieve the presiding officer of his responsibility under this rule. If a witness gives evidence different from that given by him when the summary of evidence was taken, he should be questioned as to the difference.

5. The presiding officer should always put to the witnesses any questions which appear to him necessary or desirable for the purpose of eliciting the truth; see AR 143 and notes thereto.

**77. Power of court over address of prosecutor and accused.**—(1) It is the duty of the prosecutor to assist the court in the administration of justice, to behave impartially, to bring the whole of the transaction before the court, and not to take any unfair advantage of, or suppress any evidence in favour of, the accused.

(2) The prosecutor may not refer to any matter, not relevant to the charge or charges then before the court, and it is the duty of the court to stop him from so doing and also restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor.

(3) The court shall allow great latitude to the accused in making his defence; he must abstain from any remarks contemptuous or disrespectful towards the court, and from coarse and insulting language towards others, but he may for the purposes of his defence impeach the evidence and the motives of the witnesses and the prosecutor, and charge other persons

with blame and even criminality, subject, if he does so, to any liability which he may thereby incur. The court may caution the accused as to the irrelevance of his defence, but shall not, unless in special cases, stop his defence solely on ground of such irrelevance.

#### NOTES

1. As to the duties of the prosecutor, see memoranda on page 312. As to the addresses by the prosecutor, see ARs 56, 58, 59 and 78.

2. The prosecutor is an officer whose duty, it is to see that justice is done and not a partisan intent on securing a conviction independently of the justice of the case. He should, therefore, put before the court facts which show the true character of the offence, and must be careful to prove affirmatively any facts tending to show the innocence of the accused or extenuate his offence, e.g., he should himself produce any available evidence of provocation which might mitigate punishment.

3. It occasionally happens that a sepoy charged with desertion was to the knowledge of the prosecutor, arrested or rendered an involuntary absentee at a date earlier than the termination of his absence as alleged in the particulars of the charge. In such circumstances it is the duty of the prosecutor, although he has no direct evidence to prove the earlier termination of the absence, to tell the court the information which he possesses, and to invite them to act upon such information by recording a special finding under AR 62(4).

4. The prosecutor must not introduce matters of aggravation into the evidence against the accused unless they are relevant to the charge against him. Generally speaking, anything which tends to show that the accused committed the offence charged, or to show the true character of the offence, is relevant.

5. As to the latitude to be given to the accused in making his defence, see notes to AR 58. If the accused charges other persons with blame or criminality, the court should caution him that he may be incurring a liability to be charged subsequently with knowingly making a false accusation. [AA.s. 56(a)].

6. The case must be very special indeed to justify the court in stopping the accused in his defence, or in excluding on the ground of irrelevancy, evidence offered by him, or to justify any further proceedings against him on account of his defence.

**78. Procedure on trial of accused persons together.**— Where two or more accused persons are tried together and any evidence as to the facts of the case is tendered by anyone or more of them, the evidence and addresses on the part of or on behalf of all the accused persons shall be taken before the prosecutor replies, and the prosecutor shall make one address only in reply as regards all the accused persons.

**79. Separate charge-sheets.**— (1) The convening officer may direct any charges against an accused person to be inserted in different charge-sheets, and when he so directs, the accused shall be arraigned and until after the finding tried, upon each charge-sheet separately, and the procedure in rules 48 to 62, both inclusive, shall, until after finding, be followed in respect of each charge-sheet, as if it contained the whole of the charges against the accused.

(2) The trials upon the several charge-sheets shall be in such order as the convening officer directs.

(3) When the court have tried the accused upon all the charge-sheets they shall, in the case of the finding being “Not guilty” on all the charges, proceed as directed by rule 63, and in case of the finding on any one more of the charges being “Guilty” proceed as directed by rules 54 and 64 to 67, both inclusive, in like manner in each case as if all the charges in the different charge-sheets had been contained in one charge-sheet, and the sentence passed shall be of the same effect as if all the charges had been contained in one charge-sheet.

(4) If the convening officer directs that in the event of the conviction of an accused person upon a charge in any charge-sheet, he need not be tried upon the subsequent charge-sheets, the court in such event may, without trying the accused upon any of the subsequent charge-sheets, proceed as provided in sub-rule (3).

(5) Where a charge-sheet contains more than one charge, the accused may, before pleading, claim to be tried separately in respect of any charge or charges in that charge-sheet, on the ground that he will be embarrassed in his defence if he is not so tried separately; and in such case the court, unless they think his claim unreasonable, shall arraign and try the accused in like manner as if the convening officer had inserted the said charge or charges in different charge-sheets.

(6) If a plea of “Guilty”, to any charge in a charge-sheet has been recorded as the finding of the court, the provisions of sub-rules (3) and (4) of rule 54 shall not be complied with until after the court had arrived at its findings on all the charge-sheets.

## NOTES

1. Most of the ordinary cases which come before courts-martial are so simple in their facts that an accused person is not likely to be embarrassed by being tried upon several charges at the same time. But if the charges are complicated, or if the alleged offences were committed at different times, or if different sets of witnesses are required to prove the different charges, embarrassment is likely to arise, and in such cases the convening officer should cause the charges to be inserted in separate charge-sheets, numbered consecutively in the order in which he directs them to be tried.

2. It is difficult to lay down for the guidance of convening officers any definite rules as to the placing of the charges in different charge-sheets; much will depend upon the circumstances of each particular case. But the following general principles may be laid down:-

- (a) Alternative charges must not be placed in different charge-sheets.
- (b) A series of offences forming part of one escapade should normally be placed in a single charge-sheet, e.g., escape from custody followed by resistance to escort upon re-arrest and gross insubordination to the guard commander after recommittal to confinement. Multiplicity of charges arising out of the same transaction should, however, be avoided, though in some cases it is necessary to allege a series of offences, e.g., to prove some particular intent, or to guide the court in determining the proper punishment to be awarded.
- (c) Repeated instances of offences of the same or similar character should be included in a single charge-sheet; e.g., a series of barrack-room thefts from comrades during a short span of time.
- (d) Offences of different description should be entered in separate charge-sheets except where they form part of or are relevant to one transaction or where the facts of each case are simple, e.g., where a soldier is charged with desertion and with using criminal force to his superior officer after he had been handed over to the escort, the charges should normally be inserted in separate charge-sheets, unless the facts are simple. But if immediately before the alleged desertion, the accused made away with his Army clothing, a charge in respect of the latter offence is relevant to the intent of the accused in leaving his unit and should be inserted in the same charge-sheet as the charge of desertion.

3. Even if the convening officer has directed all charges to be inserted in a single charge-sheet, the accused under sub-rule (5) has the right to apply for separate trial.

4. Where the accused is arraigned on separate charge-sheets, the court must arrive at its finding upon one charge-sheet before the next charge-sheet is proceeded with.

5. Where any evidence given upon the trial of an accused on one charge-sheet is required to be given on the trial of the same accused person on a subsequent charge-sheet, it must be given afresh, but the witness giving such evidence need not be sworn/affirmed again, but he should be reminded of his previous oath/affirmation.

6. Generally speaking, the convening officer will regulate the order for the trial of different charge-sheets according to the date of the respective offences. But where the gravity of the various offences differ, it may be desirable to insert the charge involving the gravest offence in the first charge-sheet, as, if the accused is convicted, he will be sufficiently punished without trying him in respect of the minor offences; see sub-rule (4). Occasionally it will be desirable to direct that a charge which necessitates the calling of a large number of witnesses should be inserted in the first charge-sheet, so that the attendance of such witnesses can be dispensed with after the trial on that charge-sheet has been completed.

7. After the finding of the court upon all the charge-sheet, has been arrived at, the procedure will be the same as if all the charges had been inserted in one charge-sheet. Unless, the convening officer directs that the accused need not be tried upon any subsequent charge-sheet, the court will not proceed to sentence until it has arrived at a finding on all the charge-sheets, and will then award one sentence in respect of all of them.

8. It will often be unnecessary, if the accused is convicted of a grave charge contained in one charge-sheet, to proceed with any other or minor offences contained in the other charge-sheets. On the other hand, it may be desirable to try the accused upon the other charge-sheets in order that a more severe sentence may be awarded, if justified.

9. The powers given to the convening officer under sub-rule (4) cannot be exercised by the prosecutor on his own initiative or by the court.

10. The court should always, unless it thinks the claim to be unreasonable, accede to a demand to be tried separately in respect of any particular charge.

11. Under sub-rule (6), where an accused has pleaded guilty to a charge entered in one of several charge-sheets, the summary of evidence relating thereto and any statement which he may make in reference to the charge or in mitigation of punishment will not be read or recorded until after the finding of the court on all the charge-sheets has been arrived at. But for this provision, the fair trial of the accused upon the other charge-sheets might be prejudiced, especially if he stated, in mitigation of punishment, anything which might point to his guilt on any charge in a charge-sheet which has not yet been tried.

**80. Sitting in closed court.**—(1) A court-martial shall, where it is so directed by these rules, and may in any other case on any deliberation amongst the members, sit in closed court.



(2) No person shall be present in closed court except the members of the court, the judge-advocate (if any) and any officers under instruction.

(3) For the purpose of giving effect to the foregoing provisions of this rule, the court-martial may either retire or cause the place where they sit to be cleared of all other persons not entitled to be present.

(4) Except as hereinbefore mentioned all proceedings, including the view of any place, shall be in open court and in the presence of the accused subject to sub-rule (5).

(5) The court shall have the power to exclude from the court any witness who has yet to give evidence or any other person, other than the accused, who interferes with its proceedings.

#### NOTES

1. If more convenient, the court may withdraw for deliberations.

2. All the members of the court, and the JA, where one is appointed, must be present in the closed court. The officers under instruction should also be present. If for any reason, an officer under instruction, is not present to attend the deliberations in closed court, his absence will not affect the validity of such deliberations.

3. All the members of the court, the JA, where one is appointed, and the accused must be present at the "view of any place". The prosecutor and the defence counsel or defending officer should also be present.

4. This rule does not affect the power of the court to exclude any person, other than the accused, who interferes with the proceedings; a power which every court possesses for the proper conduct of its proceedings. A court-martial has inherent power to sit "in camera" if necessary for the proper administration of justice. A court-martial may sit "in camera" if evidence of a secret or top secret nature is led at the trial.

**[80-A Courts Martial to be public.]**— Subject to rule 80, the place in which a court-martial is held for the purpose of trying an offence under the Act shall be deemed to be an open court to which the public generally may have access, so far as the same can conveniently contain them;

Provided that, if the court is satisfied that it is necessary or expedient in the public interest or for the ends of justice so to do, the court may at any stage of the trial of any particular case order that the public generally or any portion thereof or any particular person shall not have access to, or be or remain in the place in which the court is held]<sup>1</sup>.

**81. Hours of sitting.**— (1) A court-martial may sit at such times and for such period between the hours of six in the morning and six in the afternoon as may be directed by the proper superior military authority, and so far as no such direction extends, as the court from time to time determines but no court shall sit for more than six hours in any one day.

(2) If the court consider it necessary to continue the trial after six in the afternoon or to sit for more than six hours in any one day, it may do so but if it does so, should record in the proceedings the reason for so doing.

(3) In cases requiring an immediate example or when the convening officer certifies under his hand that it is expedient for the public service, trials may be held at any hour.

(4) If the court or the convening officer or other superior military authority thinks that military exigencies or the interests of discipline require the court to sit on Sunday or on any other day declared as a holiday in Army or Command Orders, the court may sit accordingly, but otherwise the court shall not sit on any of those days.

#### NOTES

1. Reasons for longer sittings of the court or for sittings outside the hours specified in sub-rule (1) should be recorded in the proceedings.

2. When the court sits on a Sunday or a gazetted holiday, the reasons for so doing should also be recorded in the proceedings.

**82. Continuity of trial and adjournment of court.**— (1) When a court is once assembled and the accused has been arraigned, the court shall continue the trial from day to day, in accordance with rule 81, unless it appears to the court that an adjournment is necessary for the ends of justice or that such continuance is impracticable.

(2) A court may adjourn from time to time and from place to place and may, when necessary, view any place.

<sup>1</sup> Inserted by SRO 55 dated 22 Feb, 1985.

(3) The senior officer on the spot may also, for military exigencies, adjourn or prolong the adjournment of the court.

(4) A court-martial, in the absence of a judge-advocate (if such has been appointed for that court-martial) shall not proceed, and shall adjourn.

(5) If the time to which an adjournment is made is not specified, the adjournment shall be until further orders from the proper military authority; and, if the place to which an adjournment is made, is not specified, the adjournment shall be to the same place or to such other place as may be specified in further orders from the proper military authority.

#### NOTES

1. It is very important that a trial, once begun should proceed without interruption to its conclusion. This rule, therefore, requires the court to sit from day to day unless an adjournment is necessary for the ends of justice.

2. Apart from specific provisions under the AR, an adjournment should be allowed for obtaining the opinion of the confirming authority or of the DJAG/AJAG of the command on any point of law or procedure, for enabling the accused to prepare his defence, the prosecutor to prepare his reply or the JA to prepare his summing-up.

3. The court should not, as a rule, permit an adjournment to enable the prosecutor to call new witnesses, unless the necessity for their presence at the trial could not reasonably have been foreseen. The court should adjourn if it considers that the accused has not had sufficient opportunity for procuring the attendance of any witnesses whom he desires to call, or where it would be unjust to the accused not so to adjourn.

4. The reasons for any adjournment must be entered in the proceedings, and either announced in court in presence of the accused, or communicated to the prosecutor and accused.

5. Prolonged sittings unduly strain the attention of members of the court and may operate unfairly upon the accused, who should never be required to make his defence at the close of a prolonged sitting. See AR 81.

6. Where civilian witnesses are present, the court should, if reasonably possible, complete their evidence before adjourning.

7. Sub-rule (2) meets the case where a "view" is necessary, or where a court-martial is held on the line of march, or where an adjournment to a hospital for the purpose of taking the evidence of a sick witness is rendered necessary.

8. As to "view", see AR 80 and notes thereto.

9. The military exigencies referred to in sub-rule (3) can seldom occur except on active service.

10. As to procedure on death of JA or his inability to attend, see AR 104. Where the absence of the JA is due to temporary causes, the court should adjourn until he is able to attend.

**83. Suspension of trial.**— (1) Where, in consequence of anything arising while the court is sitting, the court is unable by reason of dissolution as specified in section 117, or otherwise, to continue the trial, the presiding officer or, in his absence, the senior member, present, will immediately report the facts to the convening authority.

(2) Where a court-martial is dissolved before the finding, or, in case of a finding of guilty, before award of the sentence, the entire proceedings before the court-martial shall be null and the accused may be tried before another court-martial.

#### NOTES

1. See AA.s. 117 and notes thereto.

2. As to substitution of JA, see AR 104.

3. When a court is dissolved under sub-rule (2), every member thereof will be disqualified to sit as a member of the fresh court convened for the trial of the accused; see AR 39 (2) (c).

**84. Proceedings on death or illness of accused.**— In case of the death of the accused, or of such illness of the accused as renders it impossible to continue the trial, the court shall ascertain the fact of the death or illness by evidence, and record the same and adjourn, and transmit the proceedings to the convening authority.

#### NOTES

1. See AA.s. 117 (2). "Impossible to continue" means to continue within a reasonable time having regard to all the circumstances.

2. Oral evidence of the fact of the death or illness will be taken on oath or affirmation. Also, a medical certificate should always, where possible, be obtained, stating that the illness of the accused renders his presence in court impracticable, or dangerous to himself or others, and also the time when, in the opinion of the medical officer, the accused will be able to be present.

**85. Death, retirement or absence of presiding officer.**— In the case of the death, retirement on challenge or unavoidable absence of the presiding officer, the next senior officer shall take the place of the presiding officer and the trial shall proceed if the court is still composed of not less than the minimum number of officers of which it is required by law to consist.

#### NOTE

See AA.s. 117 and notes thereto.

**86. Presence throughout of all members of court.**— (1) A member of a court who has been absent while any part of the evidence on the trial of an accused person is taken, shall take no further part in the trial by that court of that person, but the court will not be affected unless it is reduced below the legal minimum.

(2) An officer shall not be added to a court-martial after the accused has been arraigned.

#### NOTES

1. See AA.s. 117 and notes thereto.

2. As to arraignment, see AR 48 and notes thereto.

**87. Taking of opinions of members of court.**— (1) Every member of a court must give his opinion by word of mouth on every question which the court has to decide, and must give his opinion as to the sentence, notwithstanding that he has given his opinion in favour of acquittal.

(2) The opinion of the members of the court shall be taken in succession, beginning with the member lowest in rank.

#### NOTES

1. Opinions must be given orally; see AR 61(2). The oath or affirmation taken by members of the court operates, save as therein provided, to prevent the opinions of individual members from being disclosed; see AR 45.

2. AA.s. 132(1) requires all decisions to be passed by an absolute majority, except in the case of a sentence of death passed by a GCM which requires a two-third majority (AA.s. 132(2)) and a sentence of death passed by SGCM which requires the concurrence of all the members (AAs. 132(3)). The presiding officer has no second or casting vote in the case of a sentence of death; nor where there is an equality of votes on a challenge, finding or sentence.

3. In order to obtain an absolute majority in respect of the sentence, every member must vote, even if he had voted for an acquittal on the finding. It is desirable that the nature of the punishment to be awarded should first be considered.

The procedure to be adopted will best be illustrated by the following example:

At a GCM consisting of seven members, three are in favour of a sentence of imprisonment for life, two in favour of imprisonment, and two in favour of dismissal (without imprisonment), the most lenient punishment will be first put to the vote and will be rejected by 5 votes to 2. The next most lenient punishment will then be put to the vote, viz., imprisonment. All seven members must vote again and the two members who had previously voted in favour of dismissal will naturally give their votes for imprisonment rather than imprisonment for life. The result will be an absolute majority of 4 votes to 3 in favour of imprisonment. The quantum or length of the imprisonment to be awarded will be arrived at in the same manner, the most lenient proposal being put to the vote first.

4. It is improper to strike an average between the various sentences suggested by the members of the court, but it may often happen that, in the course of further discussion, members who had originally made different proposals will arrive at a unanimous decision as to the proper sentence to be awarded.

5. The opinion of each member on the finding must be taken separately upon each charge upon which the accused is arraigned (see AR 61(2)).

6. "lowest in rank" means lowest in the rank in which members take their seats; see AR 75.

**88. Procedure on incidental questions.**— If any objection is raised on any matter of law, evidence, or procedure by the prosecutor or by or on behalf of the accused during the trial, the prosecutor or the accused or counsel or the defending officer (as the case may be) shall have a right to answer the same and the person raising the objection shall have a right of reply.

**NOTE**

This rule will apply to such questions as to the admissibility of evidence, the propriety of any question or the recalling of a witness. It will also apply to a submission, which may always be made by or on behalf of the accused at the close of the case for the prosecution, that no case has been made out justifying the court in putting the accused upon his defence; see note to AR 57.

**89. Swearing of court to try several accused persons.**— (1) A court may be sworn or affirmed at one time to try any number of accused persons then present before it, whether those persons are to be tried collectively or separately, and each accused person shall have power to object to the members of the court, and shall be asked separately whether he objects to any member.

(2) In the case of several accused persons to be tried separately, the court, upon one of those persons objecting to a member, may, according as it thinks fit, proceed to determine that objection or postpone the case of that person and swear or affirm the members of the court for the trial of the others alone.

(3) In the case of several accused persons to be tried separately, the court when sworn or affirmed shall proceed with one case postponing the other cases, and taking them afterwards in succession.

(4) Where several accused persons are tried separately by the same court upon charges arising out of the same transaction, the court may, if it considers it to be desirable in the interests of justice postpone consideration of any sentence to be awarded to any one or more of such accused persons until the trials of all such accused persons have been completed.

**NOTES**

1. Notwithstanding that, under this rule the members of the court, are sworn only once to try the persons before them, they will constitute a separate court for the trial of each case, and the swearing of the court will be mentioned in the proceedings of each case.

2. When, in consequence of an objection raised by one or several persons jointly charged, a new officer serves, the other accused persons, who had previously raised no objection to the members of the court, will have the right to object to the new officer.

3. Where two or more accused persons are tried separately by the same court and the objection of one accused to a member is allowed, that member must still sit as a member of the court for the trial of the accused who did not object to be tried by him.

4. The finding and sentence (except where the court decides to act under sub-rule (4)) must be arrived at before the next case is tried.

5. It is very desirable that the court should, where several persons are separately tried and convicted in respect of the same transaction, be in a position to apportion the proper sentences to be awarded to all the accused persons.

6. In as much as a sentence of imprisonment will under AA.s. 167 commence upon the day upon which it is eventually signed, the court, in awarding sentence, should take into consideration in favour of an accused person any postponement of sentence which has been occasioned through the operation of sub-rule (4).

**90. Swearing of interpreter and shorthand writer.**— (1) At any time during the trial an impartial person may, if the court thinks it necessary and shall, if either the prosecutor or the accused requests it on any reasonable ground, be sworn or affirmed to act as interpreter.

(2) An impartial person may at any time of the trial if the court thinks it desirable, be sworn or affirmed to act as a shorthand writer.

(3) Before a person is sworn or affirmed as an interpreter or shorthand writer the accused shall be informed of the person who is proposed to be sworn or affirmed, and may

object to the person as not being impartial or for any reasonable cause; and the court, if it thinks that the objection is reasonable, shall not swear or affirm that person as interpreter or shorthand writer.

#### NOTES

1. An interpreter or shorthand writer is usually sworn or affirmed at the commencement of the trial.
2. For the occasions when an interpreter must be employed, see AR 91.
3. An interpreter may either be appointed by the convening authority (AR 37(3)) or by the court under this rule. If a member of the court is appointed interpreter, he must take the interpreter's oath or affirmation in addition to the oath/affirmation prescribed for a member of the court in AR 45. A member or JA should not normally act as an interpreter where the trial is likely to be prolonged.
4. For form of oath and affirmation, see AR 46.
5. The accused has a right to object to the shorthand writer or the interpreter. When such an objection is raised, the same procedure will be followed as in the case of an objection to a member of the court.

**91. Evidence when to be translated.**— When any evidence is given in a language which any of the officers composing the court, the judge-advocate, the prosecutor or the accused, or his defending officer or counsel does not understand, that evidence shall be interpreted to such officer or person in a language which he does understand. If an interpreter in such language has been appointed by the convening officer, and duly sworn or affirmed, the evidence shall be interpreted by him. If no such interpreter has been appointed and sworn or affirmed, an impartial person shall be sworn or affirmed by the court as required by rule 90. When documents are put in for purpose of formal proof, it shall be in the discretion of the court to cause as much to be interpreted as appears necessary.

#### NOTE

As the charge-sheet and documentary evidence as to character will be in English, an interpreter in the language of the accused person should be appointed in every case in which the accused does not know enough English to understand these documents. Whoever interprets any evidence must be sworn or affirmed as an interpreter before doing so. See AR 90 and notes thereto.

**92. Record in proceedings of transactions of court-martial.**— (1) At a court-martial the judge-advocate, or if there is none, the presiding officer shall record, or cause to be recorded [in the Hindi or English language]<sup>1</sup> all transactions of that court, and shall be responsible for the accuracy of the record (in these rules referred to as the proceedings) and if the judge-advocate is called as a witness by the accused, the presiding officer shall be responsible for the accuracy of the record in the proceedings of the evidence of the judge-advocate.

(2) The evidence shall be taken down in a narrative form in as nearly as possible the words used, but in any case where the prosecutor, the accused person, the judge-advocate, or the court considers it material, the question and answer shall be taken down verbatim.

(3) Where an objection has been taken to any question or to the admission of any evidence or to the procedure of the court, such objection shall, if the prosecutor or accused so requests or the court thinks fit, be entered upon the proceedings together with the grounds of the objection and the decision of the court thereon.

(4) Where any address by, or on behalf of, the prosecutor or the accused, is not in writing, it shall not be necessary to record the same in the proceedings further or otherwise than the court thinks proper, except that—

- (a) the court shall in every case make such record of the defence made by the accused as will enable the confirming officer to judge the reply made by, or on behalf of, the accused to each charge against him; and
- (b) the court shall also record any particular matters in the address by or on behalf of, the prosecutor or the accused which the prosecutor or the accused, as the case may be, may require.

(5) The court shall not enter in the proceedings any comment or anything not before the court, or any report of any fact not forming part of the trial, but if any such comment or

<sup>1</sup> Substituted vide SRO 17 (E), dated 6th December, 1993

report seems to the court necessary, the court may forward it to the proper military authority in a separate document, signed by the presiding officer.

#### NOTES

1. The record, where no shorthand writer is employed, must be taken in a clear and legible hand and should be typed. Interlineations and corrections must be avoided as much as possible; if made they should be initiated by the presiding officer or JA, if any. If desired, a typed copy may be substituted for the original manuscript record; if so substituted it must be checked with the original by the officer responsible for the accuracy of the proceedings. The pages should be numbered and the various sheets fastened together, sheets not used being removed. Sufficient space must be left below the signature of the presiding officer for the decision of the confirming authority. The place and date of the signing of the sentence by the presiding officer must be inserted.

2. No corrections or additions may be made to the proceedings of a court-martial after promulgation. When an obvious oversight has been made in the record, such as the omission of the words, "the presiding officer and members are duly sworn/affirmed", a certificate, signed by the presiding officer, to the effect that they were duly sworn/affirmed should be attached. But see note 1 to AR 67 as to signing and dating the sentence after promulgation.

3. While recording evidence in the narrative form, the material effect of the question and answer will be written down: *e.g.*, where the question is "What did the accused do next"? and the answer is "He left the room"; the evidence as recorded, should read, "The accused then left the room".

4. Documentary evidence will be read by the presiding officer or JA if any; it should then be marked with a distinguishing letter or figure and attached to the proceedings. In many cases, it will be sufficient to attach copies of documents which must, however, be compared with the originals by the court and certified under the hand of the presiding officer to be true copies (see note 3 to AR 67).

5. If a shorthand writer is employed, the evidence is usually taken down verbatim by him. If the evidence of a witness is not given in English, the material effect of question and answer interpreted in English will be recorded.

6. Sub-rule (2) applies to questions and answers given in examination-in-chief, cross-examination, re-examination as well as questions by the court.

7. The court can make in a separate document any remark it thinks proper on the conduct of any person who appeared before it, or on the manner in which a particular witness has given his evidence, or on the manner in which the prosecution has been conducted; also, if it thinks the evidence shows that the accused has committed some offence not charged; *e.g.*, if he is charged with desertion in August, and the evidence shows that he deserted in June, it must acquit him, but may report separately the offence of June.

8. The court can scarcely be too guarded in expressing censure on individuals not before it for trial; indeed, cases justifying such expression will be rare and exceptional.

9. It will usually be desirable to make a separate note at the time of any matter upon which the court intends to make any such comments or report, although it will not be correct to enter such matter in the proceedings.

**93. Custody and inspection of proceedings.**— The proceedings shall be deemed to be in the custody of the judge-advocate (if any), or, if there is none, of the presiding officer but may, with proper precaution for their safety, be inspected by the members of the court, the prosecutor and accused, respectively, at all reasonable time before the court is closed to consider the finding.

**94. Transmission of proceedings after finding.**— The proceedings shall be at once sent by the person having the custody thereof to such person as may be directed by the order convening the court, or, in default of any such direction, to the confirming officer.

#### NOTES

1. As to custody of the proceedings, see AR 93.

2. For procedure where a member of the court has become confirming authority, see AR 74.

3. The proceedings of court-martial, when despatched by post, should invariably be sent under registered cover, see Regs for the Army Para 470.

#### Defending Officer, Friend of Accused and Counsel

**95. Defending Officer and friend of accused.**— (1) At any general or district court-martial, an accused person may be represented by any officer subject to the Act who shall be



called “the defending officer” or assisted by any person whose services he may be able to procure and who shall be called “the friend of the accused”.

(2) It shall be the duty of the convening officer to ascertain whether an accused person desires to have a defending officer assigned to represent him at his trial and if he does so desire, the convening officer shall use his best endeavours to ensure that the accused shall be so represented by a suitable officer. If owing to military exigencies, or for any other reason, there shall in the opinion of the convening officer, be no such officer available for the purpose, the convening officer shall give a written notice to the presiding officer of the court-martial, and such notice shall be attached to the proceedings.

(3) The defending officer shall have the same rights and duties as appertain to counsel under these rules and shall be under the like obligations.

(4) The friend of the accused may advise the accused on all points and suggest the questions to be put to the witnesses, but he shall not examine or cross-examine the witnesses or address the court.

#### NOTES

1. Under AR 33 the accused, after he has been ordered to be tried by court-martial is to be allowed free communication with his friend, defending officer, or legal adviser.

2. As to the duties of the defending officer, see memoranda on page 314 to 315

3. Every effort should be made to secure the services of a competent officer as a defending officer, and he should be allowed time and opportunity for properly preparing the defence of the accused.

4. AR 36 empowers dispensing with sub-rule (2) in the event of military exigencies, etc.

5. The defending officer must conduct the case as representing the accused, see ARs 97(3), 99 and 100.

**[96.—Counsel allowed in general and district courts-martial.—** In every general and district court-martial, counsel shall be allowed to appear on behalf of the prosecutor as well as the accused :

Provided that convening officer may declare that it is not expedient to allow the appearance of counsel thereat and such declaration may be made as regards all general and district courts-martial held in any particular place, or as regards any particular general or district court-martial, and may be made subject to such reservation as to cases on active service, or otherwise, as deemed expedient.]<sup>1</sup>

#### NOTE

1. For qualifications of counsel, see AR 101 (2).

2. There is no restriction as to the number of counsels engaged in a case. Counsel for the defence, though not bound to such strict impartiality as the prosecutor, must nevertheless recollect that he is assisting in the administration of justice and must not be guilty of any unfairness or want of candour in his conduct of the case. In his address he will have the same liberty as the accused [see AR 77(3)]; but he should exercise more restraint in commenting on the acts of persons not before the court.

**97. Requirements for appearance of counsel.—** (1) An accused person intending to be represented by a counsel shall give to his commanding officer or to the convening officer the earliest practicable notice of such intention and, if no sufficient notice has been given, the court may, if it thinks fit, on the application of the prosecutor, adjourn to enable him to obtain a counsel on behalf of the prosecutor at the trial.

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<sup>1</sup> Subs by SRO 17 (E), dated 6th December, 1993

(2) If the convening officer so directs, counsel may appear on behalf of the prosecutor, but in that case, unless the notice referred to in sub-rule (1) has been given by the accused, notice of the direction for counsel to appear shall be given to the accused at such time (not in any case less than seven days) before the trial, as would, in the opinion of the court, have enabled the accused to obtain counsel to assist him at the trial.

(3) The counsel, who appears before a court-martial on behalf of the prosecutor or accused, shall have the same right as the prosecutor or accused for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the court, to put in any plea, and to inspect the proceedings, and shall have the right otherwise to act in the course of the trial in the place of the person on whose behalf he appears, and he shall comply with these rules as if he were that person and in such case that person shall not have the right himself to do any of the aforesaid matters except as regards the statement allowed by clause (a) of sub-rule (2) of rule 58 and clause (b) of rule 59 or except so far as the court permits him so to do.

(4) When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined and re-examined as any other witness and sub-rules (5) and (6) of rule 56 shall not apply.

#### NOTE

When the convening officer intends to appoint or apply for the services of an officer of the JAG's Department or an officer holding legal qualifications to act as prosecutor, similar notice should be given to the accused to enable him, if he so desires, to obtain counsel to represent him at the trial.

**98. Counsel for prosecution.**— The counsel appearing on behalf of the prosecutor shall have the same duty as the prosecutor, and is subject to be stopped or restrained by the court in the manner provided in sub-rule (2) of rule 77.

#### NOTE

Counsel appearing on behalf of the prosecutor should always make an opening address, and should state therein the substance of the charge against the accused and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into unnecessary details.

**99. Counsel for accused.**—The counsel appearing on behalf of the accused has the like rights, and is under the like obligations as are specified in sub-rule (3) of rule 77 in the case of the accused.

#### NOTE

If the court asks counsel for the accused a question as to any witness or matter, he may decline to answer, but he must not give to the court any answer or information which is misleading.

**100. General rules as to counsel.**— Counsel, whether appearing on behalf of the prosecutor or of the accused, shall conform strictly to these rules and to the rules of criminal courts in India relating to the examination, cross-examination, and re-examination of witnesses, and relating to the duties of a counsel.

#### NOTES

1. Counsel should not state as a fact any matter which is not proved, or which he does not intend to prove in evidence, nor should he state what is his own opinion as to any matter of fact before the court. In a question to a witness he should not assume that facts have been given in evidence which have not been so given, or that particular answers have been given contrary to the fact.

2. Counsel should treat the court and JA with due respect, and should while regarding the exigencies of his case, bear in mind the requirements of military discipline in the respectful treatment of any superior officer of the accused who may attend as a witness.

**101. Qualifications of counsel.**— (1) Neither the prosecutor nor the accused has any right to object to any counsel if properly qualified.

(2) Counsel shall be deemed properly qualified if he is a legal practitioner authorised to practice with right of audience in a Court of Sessions in India, or if, he is recognised by the convening officer in any other country where the trial is held as having in that part, rights

and duties similar to those of such legal practitioner in India and as being subject to punishment or disability for a breach of professional rules.

### **Judge-Advocate**

**102. Disqualification of judge-advocate.**—An officer who is disqualified for sitting on a court-martial, shall be disqualified for acting as a judge advocate at that court-martial.

#### **NOTES**

1. As to the appointment of a JA, at a GCM or DCM, see AA.s. 129. Omission to appoint a JA at a GCM will invalidate the proceedings.

2. As to disqualification of a JA, See AR 39(2).

3. A JA should be free of all suspicion of bias or prejudice. He should have had experience of the practice and procedure of courts-martial and a knowledge of the general principles of law and of the rules of evidence.

**103. Invalidity in the appointment of judge-advocate.**—A court-martial shall not be invalid merely by reasons of any invalidity in the appointment of the judge-advocate officiating thereat, in whatever manner appointed, if a fit person has been appointed and the subsequent approval of the Judge-Advocate General or Deputy Judge-Advocate General obtained, but this rule shall not relieve from responsibility the person who made the invalid appointment.

#### **NOTE**

See notes to AA.s. 129.

**104. Substitute on death, illness or absence of judge-advocate.**—If the judge-advocate dies, or from illness or from any cause whatever is unable to attend, the court shall adjourn, and the presiding officer shall report the circumstances to the convening authority; and a fit person not disqualified to be judge advocate may be appointed by that authority, who shall be sworn or affirmed, and act as judge-advocate for the residue of the trial or until the judge-advocate returns.

#### **NOTES**

1. The court will in no circumstances proceed in the absence of a JA who has been duly appointed.

2. This rule permits substitution of a JA in case of his death or illness, by any other fit person not disqualified to be a JA. Such person may be, appointed for the residue of the trial or until return of the JA first appointed.

3. For duties of JA see AR 105.

4. See also AA.s. 117(2) and notes thereto.

**105. Powers and duties of judge-advocate.**—The powers and duties of a judge-advocate are as follows:—

(1) The prosecutor and the accused, respectively, are, at all times after the judge-advocate is named to act on the court, entitled to his opinion on any question of law related to the charge or trial, whether he is in or out of court, subject, when he is in court, to the permission of the court.

(2) At a court-martial, he represents the Judge-Advocate-General.

(3) He is responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not, he shall inform the convening officer and the court of any informality or defect in the charge, or in the constitution of the court, and shall give his advice on any matter before the court.

(4) Any information or advice given to the court, on any matter before the court shall, if he or the court desires it, be entered in the proceedings.

(5) At the conclusion of the case, he shall sum up the evidence and give his opinion upon the legal bearing of the case, before the court proceeds to deliberate upon its finding.

(6) The court, in following the opinion of the judge-advocate on a legal point, may record that it has decided in consequence of that opinion.

(7) The judge-advocate has, equally with the presiding officer, the duty of taking care that the accused does not suffer any disadvantage in consequence of his position as such, or of his ignorance or incapacity to examine or cross-examine witnesses or otherwise, and may, for that purpose, with the permission of the court, call witnesses and put questions to witnesses, which appear to him necessary or desirable to elicit the truth.

(8) In fulfilling his duties, the judge-advocate must be careful to maintain an entirely impartial position.

#### NOTES

1. For the documents to be forwarded to JA by the convening officer see AR 37(4).
2. As to summing up, see AR 60 and notes thereto.
3. Upon any point of law or procedure which arises at the trial, the court should be guided by the opinion of the JA, and not disregard it, except for very weighty reasons. The court is responsible for the legality of its decision, but it must consider the grave consequences which may result from its disregard to the advice of the JA on any legal point. If a court-martial, acting without jurisdiction or in excess of jurisdiction, convicts a person subject to AA, the members of the court may be held liable in damages by a civil court and such liability—or at least the amount of the damages—may depend upon the question whether they exercised a bonafide judgment, and the fact that they accepted the advice of the JA, even if such advice was held to be wrong, might practically exonerate the members from liability.
4. For the duty of presiding officer, see AR 76(2).
5. Permission to call and question witnesses should never be refused unless the court considers that the JA is acting improperly or in such a manner as to obstruct the proceedings. The court should record its reason for refusing permission.

### SECTION 3—SUMMARY COURTS-MARTIAL

**106. Proceedings.**—(1) The officer holding the trial hereinafter called the court, shall record, or cause to be recorded, in [the Hindi or English language]<sup>1</sup>, the transactions of every summary court-martial.

(2) The evidence shall be taken down in a narrative form in as nearly as possible the words used; but in any case where the court considers it material, the question and answer shall be taken down verbatim.

#### NOTE

See AR 92 and notes thereto which apply mutatis mutandis to this rule.

**107. Evidence when to be translated.**— When any evidence is given in a language which the court or the accused does not understand, that evidence shall be interpreted to the court or officers or junior commissioned officers attending the proceedings in accordance with sub-section (2) of section 116 or the accused as the case may be in a language which it or he does understand. The court shall, for this purpose, either appoint an interpreter, or shall itself take the oath or affirmation prescribed for an interpreter at a summary court-martial. When documents are put in for the purpose of formal proof, it shall be in the discretion of the court to cause as much to be interpreted as appears necessary.

#### NOTES

1. See note to AR 91.
2. Any evidence not understood by the persons attending the trial should also be translated to them. For person attending the trial, see A.A.s. 116(2).
3. The CO should, as a general rule, take the interpreter's oath or affirmation himself, in addition to the oath or affirmation prescribed in AR 109 for the court. In the rare cases where the CO does not know the language of the accused he should appoint a competent interpreter. Whoever interprets any evidence must be sworn or affirmed as an interpreter before his doing so; but see AR 149.

**108. Assembly.**— When the court, the interpreter (if any), and the officers or junior commissioned officers attending the trial are assembled, the accused shall be brought before the court, and the oaths or affirmation prescribed in rule 109 taken by the persons therein mentioned.

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<sup>1</sup> Inserted by SRO 17 (E), dated 6th December, 1993

**NOTE**

The accused cannot object to the court or interpreter.

**109. Swearing or affirming of court and interpreter.**—(1) The court shall make oath or affirmation in one of the following forms or in such other form to the same purport as may be according to its religion or otherwise binding on its conscience.

**Form of Oath**

“I . . . . ., swear by Almighty God that I will well and truly try the accused (or accused persons) before the court according to the evidence, and that I will duly administer justice according to the Army Act without partiality, favour or affection; and if any doubt shall arise, then, according to my conscience, the best of my understanding, and the custom of war in the like cases.”

**Form of Affirmation**

“I . . . . ., do solemnly, sincerely and truly declare and affirm that I will well and truly try the accused (or accused persons) before the court according to the evidence, and that I will duly administer justice according to the Army Act without partiality, favour or affection; and if any doubt shall arise, then according to my conscience the best of my understanding, and the custom of war in the like cases.”

(2) After which the court, or some person empowered by it, shall administer to the interpreter (if any), an oath or affirmation in one of the following forms, or in such other form to the same purport as the court ascertains to be according to his religion or otherwise binding on his conscience.

**Form of Oath**

“I . . . . ., swear by Almighty God that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial.”

**Form of Affirmation**

“I . . . . ., solemnly, sincerely and truly declare and affirm that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial.”

(3) After the oaths and affirmations have been administered, all witnesses shall withdraw from the court.

**NOTES**

1. See notes to AR 45 and 47 which apply *mutatis mutandis* to the oaths and affirmations referred to in this rule.

2. The “court” is the officer holding the trial. Two other officers or JCOs or one of either must attend the trial, but they do not form part of the court and are not as such sworn or affirmed; see AA.s. 116(2).

**110. Swearing of court to try several accused persons.**—(1) A summary court-martial may be sworn or affirmed at one time to try any number of accused persons then present before it whether those persons are to be tried collectively or separately.

(2) In the case of several accused persons to be tried separately, the court, when sworn or affirmed, shall proceed with one case postponing the other cases and taking them afterwards in succession.

(3) Where several accused persons are tried separately upon charges arising out of the same transaction, the court may, if it considers it to be desirable in the interests of justice, postpone consideration of any sentence to be awarded to anyone or more such accused persons until the trials of all such accused persons have been completed.

**NOTE**

See notes to AR 89 which apply *mutatis mutandis* to this rule.

**111. Arraignment of accused.**—(1) After the court and interpreter (if any) are sworn or affirmed as above mentioned, the accused shall be arraigned on the charges against him.

(2) The charges on which the accused is arraigned shall be read and, if necessary, translated to him, and he shall be required to plead separately to each charge.

#### NOTES

1. As to framing charges, see ARs 28 to 32 and notes thereto. Where under AA.s. 120(2), the sanction of superior authority is necessary for the trial of a charge by SCM, such sanction should be entered at the foot of the charge-sheet and signed by the superior authority or a staff officer.

2. "Arraignment" consists of (a) calling upon the accused by his number, rank, name, and description as given in the charge-sheet and asking him "Is that your number, rank, name and unit (or description)?" (b) reading the charge to him; and (c) asking him whether he is guilty or not guilty.

3. Where two or more persons are jointly charged and tried for the same offence, each is separately arraigned. Where there are more charge-sheets than one against an accused, he must be arraigned and tried upon the first charge-sheet before arraignment upon the second or subsequent charge-sheets; see ARs 79 and 126.

4. The charge-sheet, after being read to the accused, will be annexed to the proceedings.

5. The plea of the accused must be taken on all the charges in a charge-sheet. This applies to alternative charges if the accused has been arraigned upon them [see however, AR 115(3)]. The plea on each charge should be recorded as "guilty" or "not guilty".

**112. Objection by accused to charge.**—The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Act, or is not in accordance with these rules.

#### NOTES

1. A charge laid under AA.s. 54(b) for losing by neglect the property of a comrade would not disclose an offence under that section of the Act.

2. For framing of charges, see ARs 28 to 32.

3. For procedure where it appears that the accused is, by reason of insanity, unfit to stand his trial, see AR 145.

**113. Amendment of charge.**—(1) At any time during the trial if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, it may amend the charge-sheet so as to correct that mistake.

(2) If on the trial of any charge it appears to the court at any time before it has begun to examine the witnesses, that in the interests of justice any addition to, omission from or alteration in, the charge is required, it may amend such charge and may, after due notice to the accused, and with the sanction of the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the accused if the amended charge requires such sanction, proceed with the trial on such amended charge.

#### NOTES

1. See notes to AR 50.

2. See AA.s. 120(2) and notes thereto. If the amended charge is one requiring reference to superior authority and the officer holding the trial considers that there is grave reason for immediate action and that such reference cannot be made without detriment to discipline, he should attach an explanatory memorandum (AR 130) to the proceedings and after giving the accused sufficient notice of the amendments, proceed with the trial.

**114. Special pleas.**—If a special plea to the general jurisdiction of the court, or a plea in bar of trial, is offered by the accused, the procedure laid down for general and district courts-martial when disposing of such pleas shall, so far as may be applicable, be followed, but no finding by a summary court-martial on either of such pleas shall require confirmation.

#### NOTE

See ARs 51 and 53 and notes thereto.

**115. General plea of "Guilty" or "Not guilty".**—(1) The accused person's plea—"Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly either one or the other, a plea of "Not guilty")—shall be recorded on each charge.



(2) If an accused person pleads “Guilty”, that plea shall be recorded as the finding of the court; but before it is recorded, the court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence (if any) or otherwise that the accused ought to plead not guilty.

[2(A) where an accused pleads Guilty, such plea and the factum of compliance of sub-rule (2) of this rule, shall be recorded by the court in the following manner:—

Before recording the plea of Guilty of the accused, the court explained to the accused the meaning of the charge(s) to which he had pleaded Guilty and ascertained that the accused had understood the nature of the charge(s) to which he had pleaded Guilty. The court also informed the accused the general effect of the plea and the difference in procedure which will be followed consequent to the said plea. The court having satisfied itself that the accused understands the charge(s) and the effect of his plea of Guilty, accepts and records the same. The provisions of rule 115 (2) are thus complied with.]<sup>1</sup>

(3) Where an accused person pleads guilty to the first of two or more charges laid in the alternative, the court may, after sub-rule (2) of this rule has been complied with and before the accused is arraigned on the alternative charge or charges, withdraw such alternative charge or charges without requiring the accused to plead thereto, and a record to that effect shall be made upon the proceedings of the court.

#### NOTE

See notes to AR 52 which apply *mutatis mutandis* to this rule.

**116. Procedure after plea of “Guilty”.—**(1) Upon the record of the plea of “Guilty”, if there are other charges in the same charge-sheet to which the plea is “Not guilty”, the trial shall first proceed with respect to the latter charges, and, after the finding of those charges, shall proceed with the charges on which a plea of “Guilty” has been entered; but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded “Guilty” to any charge, or may, instead of trying him, record a finding upon any one of the alternative charges to which he has pleaded “Guilty” and a finding of “Not guilty” upon all the other alternative charges.

(2) After the record of the plea of “Guilty” on a charge (if the trial does not proceed on any other charges), the court shall read the summary of evidence, and annex it to the proceedings or if there is no such summary, shall take and record sufficient evidence to enable it to determine the sentence, and the reviewing officer to know all the circumstances connected with the offence. The evidence shall be taken in like manner as is directed by these rules in case of a plea of “Not guilty”.

(3) After such evidence has been taken, or the summary of evidence has been read, as the case may be, the accused may address the court in reference to the charge and in mitigation of punishment and may call witnesses as to his character.

(4) If from the statement of the accused, or from the summary of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of “Guilty”, the court shall alter the record and enter a plea of “Not guilty”, and proceed with the trial accordingly.

(5) If a plea of “Guilty” is recorded and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under sub-rules (2) and (3) shall take place when the findings on the other charges in the same charge-sheet are recorded.

(6) When the accused states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same.

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<sup>1</sup>Inserted by SRO 17 (E), dated 6th December, 1993

(7) In any case where the court is empowered by section 139 to find the accused guilty of an offence other than that charged, or guilty of committing an offence in circumstances involving a less degree of punishment, or where it could, after hearing the evidence, have made a special finding of guilty subject to exceptions or variations in accordance with sub-rule (3) of rule 121, it may if it is satisfied of the justice of such course, accept and record a plea of guilty of such other offence, or of the offence as having been committed in circumstances involving such less degree of punishment, or of the offence charged subject to such exceptions or variations.

#### NOTES

1. See notes to AR 54.

2. Sub-rule (7) provides for acceptance by the court of a qualified plea of guilty; see note 9 to AR 62. The court may accept the qualified plea of guilty, if it is satisfied of the justice of such a course.

**117. Withdrawal of plea of “Not guilty”.**—The accused may, if he thinks fit, at any time during the trial, withdraw his plea of “Not guilty” and plead “Guilty”, and in such case the court shall at once, subject to a compliance with sub-rule (2) of rule 115, record a plea and finding of “Guilty”, and shall, so far as may be, proceed in the manner provided in rule 116.

**118. Procedure after plea of “Not guilty”.**—After the plea of “Not guilty” to any charge is recorded, the evidence for the prosecution shall be taken. At the close of the evidence for the prosecution, the accused shall be asked if he has anything to say in his defence, and may address the court in his defence, or may defer such address until he has called his witnesses. The court may question the accused on the case for the purpose of enabling him to explain any circumstances appearing in his statement or in the evidence against him. The accused shall not render him liable to punishment by refusing to answer such questions, or by giving answers to them which he knows not to be true; [\*\*\*]<sup>1</sup>. No oath shall be administered to the accused.

The accused may then call his witnesses, including also witnesses to character.

#### NOTES

1. For general provisions as to witnesses and evidence, see ARs 134 to 143.

2. As to the record in the proceedings of transactions of the court, see generally AR 92.

3. The evidence will be taken by question and answer, or the witness may be asked to tell his own story, questions being subsequently asked to make good any omissions. It will, as a rule, be recorded in a narrative form; but where the accused or the court considers it material, the question and answer will be taken down verbatim. The material effect only of the question and answer will be written down, *e.g.*, where the question is “what did the accused do next?” and the answer is “he left the room”, the evidence as recorded would read “the accused then left the room”. Documentary evidence after being read should be marked with a distinguishing letter or figure and attached to the proceedings; see also note 3 to AR 67.

4. It is open to the accused, at the close of the case for the prosecution, to submit that the evidence given for the prosecution has not established a *prima facie* case against him and that he should not, therefore be called upon for his defence. If the court is satisfied that it is well founded, the accused must be acquitted; see AR 57 and notes thereto.

5. The utmost liberty consistent with the interests of parties not before the court and with the dignity of the court itself should be allowed to the accused in making his defence (see AR 77 (3)) and the court should, if necessary, adjourn to allow him time for its preparation. He has the privilege of making statements which are unsupported by evidence (see note 10 to AR 58).

6 It should be remembered that an accused cannot give evidence on oath and therefore any statement made by him must be carefully considered. ‘Though not given on oath and subject to the test of cross-examination, it will often be of value, particularly if it is in any respect corroborated by evidence from other sources.

7. As to questioning of accused by court, see note 3 to AR 58.

**119. Witnesses in reply to defence.**—The court may, if it thinks it necessary in the interest of justice, call witnesses in reply to the defence.

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<sup>1</sup> Omitted by SRO 17(E), dated 6th December, 1993

## NOTES

1. This is an extreme measure and should only be resorted to when the accused has made or elicited from his witnesses some statement material to the defence, which could not reasonably have been foreseen when the case for the prosecution was being investigated; see also note to AR 143.

2. As to reference by accused to a Government officer at a trial for desertion etc., see AA.s. 143.

**120. Verdict.**—After all the evidence, both for prosecution and defence, has been heard, the court shall give its opinion as to whether the accused is guilty or not guilty of the charges.

## NOTES

1. The court need not be closed and the finding may be pronounced at once. On the other hand the officer holding the trial may clear the court to consider the evidence, or to discuss any point with the officers/ JCOs attending the trial, or may adjourn the court to allow himself time for further consideration or reference as to any doubtful point.

2. See also notes to AR 61 which apply mutatis mutandis to this rule.

**121. Form and record of finding.**—(1) The finding on every charge upon which the accused is arraigned shall be recorded, and except as mentioned in these rules, such finding shall be recorded simply as a finding of “Guilty”, or of “Not guilty”.

(2) When the court is of opinion as regards any charge that the facts proved do not disclose the offence charged or any offence of which he might under the Act legally be found guilty on the charge as laid, the court shall acquit the accused of that charge.

(3) When the court is of opinion as regards any charge that the facts found to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of “Not guilty” record a special finding.

(4) The special finding may find the accused guilty on a charge subject to the statement of exceptions or variations specified therein.

(5) The court shall not find the accused guilty on more than one of two or more charges laid down in the alternative, even if conviction upon one charge necessarily connotes guilty upon the alternative charge or charges.

## NOTE

See notes to AR 62.

**122. Procedure on acquittal.**—If the finding on each of the charges in a charge-sheet is “Not guilty”, the court shall date and sign the proceedings, the findings shall be announced in open court, and the accused will be released in respect of those charges.

**123. Procedure on conviction.**—(1) If the finding on any charge is ‘Guilty’, the court may record of its own knowledge, or take evidence of and record, the general character, age, service, rank, and any recognised acts of gallantry or distinguished conduct of the accused, and previous convictions of the accused either by a court-martial, or a criminal court, any previous punishments awarded to him by an officer exercising authority under section 80, the length of time he has been in arrest or in confinement on any previous sentence, and any military decoration, or military reward, of which he may be in possession or to which he is entitled.

(2) If the court does not record the matters mentioned in this rule of its own knowledge, evidence on these matters may be taken in the manner provided in rule 64 for similar evidence at general and district court-martial.

## NOTE

See notes to AR 64.

**124. Sentence.**—The court shall award one sentence in respect of all the offences of which the accused is found guilty.

#### NOTES

1. See notes to AR 65.
2. Sentences, unless for one year exactly, should, if for one month or upwards, be recorded in months. Sentences consisting partly of months and partly of days should be recorded in months and days. A month means a calendar month.
3. When a SCM awards a sentence of imprisonment for a period not exceeding three months, to which no sentence of dismissal is added, the court should enter a direction, which should form part of the sentence, that the imprisonment will be carried out by confinement in military custody (AA.s. 169(3)). Unless such a direction is given, the offender has to be committed to a civil prison, which is most undesirable in the case of a person who is to return to duty after undergoing his punishment. On active service, however, the officer commanding the forces in the field can, under, AA. s. 169 (4), appoint places in which sentence of imprisonment of any length may be carried out.
4. For the date a sentence of dismissal awarded by a court-martial takes effect, see AR 168. Sentences of imprisonment combined with dismissal should, as a rule, be carried out by confinement in a civil prison.
5. Sentences of simple imprisonment are inexpedient and inconvenient of execution.
6. As to suspension of sentences of imprisonment, see AA.s. 182 and notes thereto.

**125. Signing of proceedings.**—The court shall date and sign the sentence and such signature shall authenticate the whole of the proceedings.

#### NOTE

It is essential that the date of sentence should be inserted, as under AA. s. 167 a term of imprisonment is reckoned to commence on the day on which the sentence and proceedings were signed by the court.

**126. Charges in different charge-sheets.**—When the charges at a trial by summary court-martial are contained in different charge-sheets, the procedure laid down for general and district courts-martial when trying charges contained in different charge-sheets shall, so far as may be applicable, be followed.

#### NOTE

As to insertion of charges in separate charge-sheets and procedure, see AR 79 and notes thereto.

**127. Clearing the court.**—(1) The officer holding the trial may clear the court to consider the evidence or to consult with the officers or junior commissioned officers, attending the trial.

(2) Except as above-mentioned, all the proceedings, including the view of any place, shall be in open court, and in the presence of the accused.

#### NOTE

See notes to AR 80. Apart from the officer holding the trial and the accused, the officers or JCOs attending the trial must also be present at the "view".

**128. Adjournment.**—A summary court-martial may adjourn from time to time and from place to place, and may, when necessary, view any place.

#### NOTE

See generally notes to ARs 81 and 82.

**129. Friend of accused.**—In any summary court-martial, an accused person may have a person to assist him during the trial, whether a legal adviser or any other person. A person so assisting him may advise him on all points and suggest the questions to be put to witnesses, but shall not examine or cross-examine witnesses or address the court.

**130. Memorandum to be attached to proceedings.**—An explanatory memorandum is to be attached to the proceedings when a summary court-martial tries, without reference, an offence which should not ordinarily be so tried.

**NOTE**

See AA.s. 120(2) and notes. This explanation should invariably be attached. If the officer holding the trial loses sight of the law and tries without reference any of the offences mentioned in AA. s. 120(2) without considering whether grave reasons for immediate action exist or not, the trial is illegal.

**131. Promulgation.**—The sentence of a summary court-martial shall (except as provided in rule 132) be promulgated, in the manner usual in the service, at the earliest opportunity after it has been pronounced and shall be carried out without delay after promulgation.

**NOTE**

See generally notes to AR 71.

**132. Promulgation to be deferred in certain circumstances.**—When the officer holding the trial has less than five years' service, the sentence of a summary court-martial shall not (except on active service) be carried out until approved by superior authority as provided in sub-section (2) of section 161.

**NOTES**

1. The officer to whom the sentence is referred cannot in any way alter the finding or remit, mitigate, or commute the sentence, but if he considers the sentence too severe he should inform the officer holding the trial of his views and direct him to modify the sentence, which order should be obeyed as a matter of discipline. The original sentence must not be carried out until the case is finally settled.

2. The provisions of this rule do not affect the date from which the sentence takes effect; see AA.s. 167 and AR 168.

**133. Review of proceedings.**—The proceedings of a summary court-martial shall, immediately on promulgation, be forwarded (through the Deputy Judge-Advocate General of the command in which the trial is held) to the officer authorised to deal with them in pursuance of section 162. After review by him, they will be returned to the accused person's corps for preservation in accordance with sub-rule (2) of rule 146.

**NOTE**

See AA.s. 162. The proceedings of an SCM will not be set aside on merely technical grounds. The words "merits of the case" refer to cases where the charge discloses no offence, or where the evidence is insufficient to support the charge, or where there is some material irregularity in procedure which, in the opinion of the reviewing authority has led to injustice. But where the accused is not misled by any defect in the charge and the statement of offence and the particulars taken together disclose an offence under the AA and supply the accused with sufficient information of the particulars of the charge, which he has to meet, the evidence on which the accused is convicted is given on oath or affirmation and is legally admissible and reasonably sufficient to support the charge, and the accused has not been prejudiced by any irregularity in procedure and has been allowed to call his witnesses and to cross-examine the witnesses against him, the proceedings may legally be upheld, the irregularities calling for no more than a remark for future guidance.

**SECTION 4 - GENERAL PROVISIONS****Witnesses and Evidence**

**134. Calling of all prosecutor's witnesses.**—The prosecutor or, in the case of a trial by summary court-martial, the court is not bound to call all the witnesses for the prosecution whose evidence is in the summary [\*\*\*]<sup>1</sup> of evidence or whom the accused has been informed he or it intends to call, but he or it should ordinarily call such of them as the accused desires, in order that he may cross-examine them, and shall, for this reason, so far as practicable, secure the attendance of all such witnesses.

**NOTES**

1. As to giving to the accused the summary of evidence, see AR 33(7).

2. It will be noted that the prosecutor is not required to call any witness at the trial who was called by the accused at the taking of summary of evidence.

3. It is not necessary for the prosecutor to examine at length a witness for the prosecution called at the request of the accused and tendered for cross-examination under this rule.

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<sup>1</sup> Omitted by SRO 17(E), dated 6th December, 1993

**135. Calling of witness whose evidence is not contained in summary.**—If the prosecutor, or, in the case of a summary court-martial, the court intends to call a witness whose evidence is not contained in any summary [\*\*\*]<sup>1</sup> of evidence given to the accused, notice of the intention shall be given to the accused a reasonable time before the witness is called together with an abstract of his proposed evidence; and if such witness is called without such notice [\*\*\*]<sup>1</sup> having been given the court shall, if the accused so desires it, either adjourn after taking the evidence of the witness, or allow the cross-examination of such witness to be postponed and the court shall inform the accused of his right to demand such adjournment or postponement.

**NOTE**

It will be noted that this rule applies only in the case of witnesses called for the prosecution and not in the case of witnesses called by the accused or by the court under AR 143(4).

**136. List of witnesses of accused.**—The accused shall not be required to give to the prosecutor or court a list of the witnesses whom he intends to call, but it shall rest with the accused alone to secure the attendance of any witness whose evidence is not contained in the summary [\*\*\*]<sup>1</sup> and for whose attendance the accused has not requested steps to be taken as provided by sub-rule (1) of rule 34.

**NOTE**

A member of the court, JA and prosecutor are competent witnesses for the defence, and may be sworn/affirmed at any stage of the proceedings, but an officer should not be detailed to serve as a member of, or act as prosecutor or JA at, a court-martial if his evidence is likely to be required. A witness for the prosecution cannot serve as a member of the court or act as JA at the trial of the case in which he is a witness (See ARs 39(2) (b) and 102).

**137. Procuring attendance of witnesses.**—(1) In the case of trials by general or district court-martial, the Commanding Officer of the accused, the convening officer or, after the assembly of the court, the presiding officer, shall take proper steps to procure the attendance of the witnesses whom the prosecutor or accused desires to call, and whose attendance can reasonably be procured, but the person requiring the attendance of a witness may be required to undertake to defray the cost (if any) of their attendance.

(2) The court shall, in the case of trials by summary court-martial, take proper steps to procure the attendance of the witnesses whom the accused desires to call and whose attendance can reasonably be procured, but the accused may be required to undertake to defray the cost (if any) of their attendance.

**NOTES**

1. See AA.s. 135 as to summoning witnesses.

2. For form of summons, see Appendix III, Part III to AR.

3. Witnesses who are subject to AA should be ordered by the proper authority to attend without the issue of a formal summons. The appropriate naval or air force authorities should be approached for the attendance of witnesses subject to naval or air force law.

4. An accused person can have no technical ground of complaint if the attendance of a witness from distant parts cannot be procured, but it is the duty of the CO or convening officer, or after the assembly of the court, the presiding officer, or in the case of trial by SCM, the court, to take all reasonable steps to secure the attendance of any witness whom there is any ground to suppose to be material to the defence, and AR 138 makes provision for the adjournment of the court if the attendance of such witness is essential.

5. The power to require the person calling a witness to undertake to defray the cost of his attendance is given in order to prevent an unreasonable demand by prosecutors or accused persons for the attendance of witnesses. In the case of the prosecutor, the cost will usually be defrayed as part of the expenses of the prosecution. In the case of the accused, this provision should not be allowed to interfere with the calling of a witness who appears to be material. The absence of a material witness might afterwards be held to invalidate the proceedings of a court-martial, even though, if the witness had been called, the court would probably have arrived at the same decision, inasmuch as it is impossible to tell what effect the evidence of such a witness might have had upon the court.

6. As to expenses of witnesses, see Travel Regulations.

7. If a civilian witness had in his possession or under his control any books, accounts, letters, returns, papers, or other documents which are considered necessary for the trial, care must be taken in summoning him to require him to bring them with him; the witness would be justified in declining to acknowledge a mere oral request.

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<sup>1</sup> Omitted by SRO 17(E), dated 6th December, 1993



8. For action where a civilian witness, who has been duly summoned and whose expenses have been tendered, makes default in attending, see AR 150(3) and notes thereto. As to privilege from arrest under civil or revenue process of a witness summoned to attend before a court-martial, see AA.s. 30.

**138. Procedure when essential witness is absent.**—If such proper steps as mentioned in the preceding rule have not been taken as to any witness, or if any witness whose attendance could not be reasonably procured before the assembly of the court is essential to the prosecution or defence, the court shall—

- (a) take steps to procure the issue of a commission for the examination of such witness; or
- (b) if it is a general or district court-martial, adjourn and report the circumstances to the convening officer; or
- (c) if it is a summary court-martial, adjourn to enable the witness to attend, or adopt such other course as appears to the officer holding the trial best calculated to do justice.

#### NOTES

1. See AA.ss. 137 and 138. Only the JAG or the DJAG of a command can issue a commission and then only when action is initiated by a court-martial. An AJAG cannot issue a commission.

2. At SCM, the court may, for instance, acquit the accused forthwith or order his release without prejudice to his subsequent trial should the witness become available.

**139. Withdrawal of witnesses from court.**—During the trial a witness, other than the prosecutor, shall not, except by special leave of the court, be permitted to be present in court while not under examination and if, while he is under examination, a discussion arises as to the allowance of a question, or the sufficiency of his answers, or otherwise as to his evidence, he may be directed to withdraw.

#### NOTES

1. It is customary to have all witnesses present in court while the members of the court are being sworn/affirmed, but they should withdraw before the arraignment. This does not, of course, apply to the prosecutor if he is a witness.

2. Permission to remain in court while not under examination may reasonably be given, e.g., to expert or professional witnesses, provided that no objection is made by or on behalf of the accused.

3. If any such discussion arises as is mentioned in the rule, the court should generally order the witness to withdraw, as his answer might be influenced by the discussion.

**140. Oath or affirmation to be administered to witnesses.**—An oath or affirmation shall, if so required by the Act, be administered to every witness before he gives his evidence by the judge-advocate (if any), a member of the court, or some other person empowered by the court in one of the following forms or in such other form to the same purport as the court ascertains to be according to the religion or otherwise binding on the conscience of the witness.

#### *Form of Oath*

“I ..... swear by almighty God that what I shall state shall be the truth, the whole truth, and nothing but the truth”.

#### *Form of Affirmation*

“I ....., do solemnly, sincerely and truly declare and affirm that what I shall state shall be the truth, the whole truth, and nothing but the truth”.

#### NOTES

1. For manner of administering and taking oaths and affirmations, see notes to ARs. 45 and 47.

2. The following is a translation into Hindi of the above oath :—

*(Form of oath)*

(Main ..... , Parmeshwar ki shapath leta hun, kih main jo kuchh kahunga vah satya, purna satya, aur kewal satya hoga)

3. The following is a translation into Hindi of the above affirmation:—

*(Form of Affirmation)*

(Main ..... , satya nishtha, shudh hridaya tatha sachhai se ghoshana karta hun aur partigya karta hun ki main jo kuchh kahunga vah satya, purna satya aur kewal satya hoga).

4. As to power of dealing with recalcitrant witnesses, see AA.s. 59 (in the case of persons subject to AA) and AR 150 (in other cases). See also AA.s. 152 and notes thereto.

**141. Mode of questioning witness.**—(1)-Every question shall be put to a witness orally by the officer holding the trial, by the prosecutor, by or on behalf of the accused, or by the judge-advocate and the witness will forthwith reply, unless an objection is made by the court, judge-advocate, prosecutor or accused, in which case he shall not reply until the objection is disposed of. The witness shall address his reply to the court.

(2) The evidence of a witness as taken down shall be read to him if he so requests before he leaves the court, and shall, if necessary, be corrected. If he makes any explanation or correction, the prosecutor and accused or counsel or the defending officer may respectively examine him respecting the same.

(3) If the witness denies the correctness of any part of evidence when the same is read over to him, the court may instead of correcting the evidence, record the objection made to it by the witness.

(4) If the evidence is not given in English and the witness does not understand that language, the evidence as recorded shall be interpreted to him in the language in which it was given, or in a language which he understands if he so requests before he leaves the court.

(5) Where evidence is recorded by shorthand writer, it shall not be necessary to read the evidence of the witness to him under sub-rule (2) or (4), if, in the opinion of the court and the judge-advocate, if any (such opinion to be recorded in the proceedings), it is unnecessary so to do.

#### NOTES

1. The court and JA must carefully listen to the actual questions put by the prosecutor and by or on behalf of the accused, as well as to the form in which such questions are put, and they must intervene before the witness replies if in their opinion, any question is improper or “leading”. If either the prosecutor or the accused, or the officer or counsel representing him, considers that a particular question about to be put by him may be objected to, he should submit the propriety of the question to the decision of the Court, having first informed the witness that he must not make his reply until the decision of the court has been given.

2. A witness is first examined by the person calling him, then cross-examined by the opposite party, after which he may be re-examined by the party calling him on matters raised in the cross-examination. The court should, if requested by either party, allow the cross-examination of a witness by that party to be postponed, especially if his evidence comes as a surprise; see also AR 135 where a witness is called, whose evidence is not contained in the summary [\*\*\*]<sup>1</sup> of evidence. A request for postponement should not be acceded to, if, in the opinion of the court, it is made for purposes of obstruction.

3. When the evidence of a witness has been read to him, he should be asked whether it is correct. Any material alteration or explanation should be inserted at the end of the record of his evidence, and not by way of interlineation or erasure.

4. If the witness makes any explanation or correction, the prosecutor and accused or counsel or defending officer may respectively examine him respecting the same.

5. Under sub-rules (2) and (4) evidence of a witness is required to be read over or translated to him if he so wishes. The fact that the witness was informed of his right under the said sub-rules should be recorded in the proceedings. If he declines to have his statement read over or translated to him, the same should be recorded accordingly.

6. After a witness has given his evidence every effort should be made to keep him separate from other witnesses who have not given their evidence before the court.

**142. Questions to witnesses by court or judge-advocate.**—(1) The presiding officer, the judge-advocate (if any), or the officer holding the trial and with the permission of the

<sup>1</sup> Omitted by SRO 17(E), dated 6th December, 1993

court, any member of the court may address a question to a witness while such witness is giving his original evidence and before he withdraws.

(2) Upon any such question being answered, the presiding officer, the judge-advocate (if any), or the officer holding the trial, shall also put to the witness any question relative to that answer which the prosecutor or the accused or counsel or the defending officer may request him to put and which the court deem reasonable.

#### NOTES

1. It will be noted that this rule applies only to the original evidence of a witness and not to any evidence given by him on being recalled. As to recalled witnesses, see AR 143.

2. It is desirable that any questions should be put after the conclusion of the examination, cross-examination (if any) of the witness; but questions may properly be put to a witness during his examination in order that his evidence may be clearly recorded.

3. The presiding officer, JA or officer holding the trial should always, under the provisions of this rule, put any question which they are requested by the prosecutor, or by or on behalf of the accused, to put and which does not seem unreasonable. It is to be noted that members of the court other than the presiding officer are not empowered except in the circumstances mentioned in sub-rule (1), to put questions.

**143. Re-calling of witnesses and calling of witnesses in reply.**—(1) At the request of the prosecutor or of the accused, a witness may, by leave of the court, be recalled at any time before the closing address of or on behalf of the accused (or at a summary court-martial at any time before the finding of the court) for the purpose of having any question put to him through the presiding officer, the judge-advocate (if any), or the officer holding the trial.

(2) The court may, if it considers it expedient, in the interests of justice, so to do, allow a witness to be called or recalled by the prosecutor, before the closing address of or on behalf of the accused, for the purpose of rebutting any material statement made by a witness for the defence or for the purpose of giving evidence on any new matter which the prosecutor could not reasonably have foreseen.

(3) Where the accused has called witnesses to character, the prosecutor before the closing address of or on behalf of the accused, may call or re-call witnesses for the purpose of proving a previous conviction or entries in the defaulter's book, against the accused.

(4) The court may call or re-call any witness at any time before the finding, if it considers that it is necessary for the ends of justice.

#### NOTES

1. The presiding officer, JA or officer holding the trial should also put to a witness recalled under the provisions of sub-rule (1) any further questions which they consider necessary in view of the answers given.

2. Sub-rules (2) and (3) are inapplicable to an SCM where there is no prosecutor. Sub-rule (4) will, however, admit of the officer holding the trial calling or recalling witnesses in similar circumstances when the ends of justice require it. See also AR 119.

3. The power given under sub-rule (4) of calling or recalling a witness should only be exercised in exceptional circumstances, e.g., where it appears for the first time from the evidence given at the trial that a person, who has not been called either by the prosecutor or on behalf of the defence, was present at, and probably witnessed the occurrence which forms the subject of the charge which is being tried. Witnesses should not be called or recalled under this provision in order to supplement any negligent conduct on the part of the prosecution. If witnesses are called or recalled under this provision, the prosecutor and the accused should be invited to put or suggest any relevant questions which in their opinion should be put by the court. If new evidence is given after the closing address by or on behalf of the prosecutor or the accused, the court should permit the prosecutor and the accused (as the case may be), make a further address upon the new matter which has been elicited (if any).

4. If a witness is recalled, he should not be sworn or affirmed again, but reminded of his previous oath or affirmation. The fact of his being reminded should be recorded in the proceedings.

### Addresses

**144. Addresses.**—All addresses by the prosecutor and the accused and the summing up of the judge-advocate may either be given orally or in writing, and if in writing shall be read in open court.

### NOTE

The summing-up of the JA should invariably be in writing. See note I to AR 60. Also see AR 92(4).

### Insanity

**[145. Finding of Insanity.**—(1) Where the court finds either that the accused by reason of unsoundness of mind, is incapable of making his defence; or that he committed the act alleged but was by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the court shall give brief reasons in support thereof. The judge advocate, if any, or the presiding officer or in the case of summary court-martial, the officer holding the trial shall record or cause to be recorded such brief reasons in the proceedings.

2. The presiding officer or in the case of summary court-martial, the officer holding the trial, shall date and sign the above record, and the proceedings, upon being signed by the judge-advocate, if any, shall at once be transmitted to the confirming officer or to the authority empowered to deal with its finding under section 162, as the case may be]<sup>1</sup>.

### NOTES

1. See AA.ss. 145 and 146 and notes thereto.

2. For form of finding see page 286

### Preservation of Proceedings

**146. Preservation of proceedings.**—(1) The proceedings of a court-martial (other than a summary court-martial) shall, after promulgation, be forwarded as circumstances require, to the office of the Judge-Advocate General, and there preserved for not less, in the case of a general court-martial, than seven years, and in the case of any other court-martial, than three years.

(2) The proceedings of a summary court-martial shall be preserved for not less than three years, with the records of the corps or department to which the accused belonged.

**[147. Right of person tried to copies of proceedings.**— Every person tried by a court-martial (other than summary court-martial) shall, after the proceedings have been signed by the Presiding Officer and in the case of summary court-martial the officer holding the trial, and before they are destroyed, on a request made by such person in writing to the Court or the officer holding the trial or the person having the custody of his proceedings, be entitled for the supply of a copy of such proceedings, within a reasonable time and free of cost, including the proceedings upon revision, if any.]<sup>2</sup>

### NOTES

1. Under this rule an accused is entitled to a copy of the proceedings of his trial free of charge. In case of joint trial by SCM the officer holding the trial or in case of joint trial by GCM, DCM or SGCM the convening officer, should ensure that sufficient copies of the proceedings are prepared to facilitate delivery of the same to the accused on demand. The application for a copy of the proceedings should be made personally by the accused.

2. For custody of proceedings after confirmation or where no confirmation is required, see AR 146.

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<sup>1</sup> sub vide SRO 17(E), dated 6th December, 1993

<sup>2</sup> sub vide SRO 169 dated 15 May, 1987

**147A. Copy of proceedings not to be given in certain cases.**—Notwithstanding anything contained in rule 147, if the Central Government certifies that it is against the interests of the security of the State or friendly relations with foreign States to supply a copy of the proceedings or any part thereof under the said rule, he shall not be furnished with such copy;

Provided that if the Central Government is satisfied that the person demanding the copy is desirous of submitting a petition in accordance with the Act or instituting any action in a court of law in relation to the finding or sentence, it shall permit inspection of the proceedings to such person or his legal adviser, if any, on the following conditions, namely:—

(a) the inspection shall be made at such times and such places as the Central Government or any authority authorised by it may direct; and

(b) the person allowed to inspect the proceedings shall, before such inspection, furnish —

- (i) an undertaking in writing, that he shall not make copies of the proceedings or any part thereof and that the information or documents contained in such proceedings shall not be used by him, for any purpose whatsoever other than for the purpose of submitting a petition in accordance with the Act or instituting an action in a court of law in relation to the said finding or sentence; and
- (ii) a certificate that he is aware that he may render himself liable to prosecution under sections 3 and 5 of the Indian Official Secrets Act, 1923 (19 of 1923), if he commits any act specified in the said sections in relation to the documents or information contained in the said proceedings.

NOTE.—This rule shall be deemed always to have been inserted in the Army Rules. Ministry of Defence Gazette Notification No. E-7 dated 17th June 1960 published in Extra ordinary Gazette Pt I Sec. 3 dated 20th June, 1960, refers.

#### NOTE

The accused or his legal adviser will be liable to be prosecuted for contravening section 3 or 5 of the Indian Official Secrets Act, 1923, if they communicate any information obtained during the inspection of the proceedings to unauthorised persons or make unauthorised use of such information.

**148. Loss of proceedings.**—(1) If, before confirmation, the original proceedings of a court-martial which require confirmation or any part thereof, are lost, a copy thereof, if any, certified by the presiding officer or the judge-advocate at the court-martial may be accepted in lieu of the original.

(2) If there is no such copy, and sufficient evidence of the charge, finding, sentence, and transactions of the court can be procured, that evidence may, with the assent of the accused, be accepted in lieu of the original proceedings, or part thereof, which have been lost.

(3) In any case above in this rule mentioned, the finding and sentence may be confirmed, and shall be as valid as if the original proceedings, or part thereof, had not been lost.

(4) If the accused refuses the assent referred to in sub-rule (2), he may be tried again, and the finding and sentence of the previous court of which the proceedings have been lost shall be void.

(5) If, after confirmation or in any case where confirmation is not required, the original proceedings of a court-martial or any part thereof are lost, and there is sufficient evidence of the charge, findings, sentence, and transactions of the court and of the confirmation

(if required) of the finding and sentence, that evidence shall be a valid and sufficient record of the trial for all purposes.

#### NOTES

1. Confirmation is not complete until the finding and sentence have been promulgated. See AR 71.
2. As to annexure to the proceedings of original documents, see note 3 to AR 67.
3. The evidence may be obtained by the presiding officer or some member of the court writing out from memory the substance of the charge, finding, sentence and transactions of the court, which should be authenticated by the signatures of the members. A copy of the charge, however, should always be procured if possible.
4. As soon as it is known that the proceedings have been lost; steps should be taken to obtain and preserve the best evidence available.

#### Irregular Procedure when no injustice is done

**149. Validity of irregular procedure in certain cases.**— Whenever, it appears that a court-martial had jurisdiction to try any person and make a finding and that there is legal evidence or a plea of guilty to justify such finding, such finding and any sentence which the court-martial had jurisdiction to pass thereon may be confirmed, and shall, if so confirmed and in the case of a summary court-martial where confirmation is not necessary, be valid, notwithstanding any deviation from these rules or notwithstanding that the charge-sheet has not been signed by the commanding officer or the convening officer, provided that the charges have, in fact, before trial been approved by the commanding officer and the convening officer or notwithstanding any defect or objection, technical or other, unless it appears that any injustice has been done to the offender, and where any finding and sentence are otherwise valid they shall not be invalid by reason only of a failure to administer an oath or affirmation to the interpreter or shorthand writer; but nothing in this rule shall relieve an officer from any responsibility for any wilful or negligent disregard of any of these rules.

#### NOTES

1. This rule is intended to prevent a miscarriage of justice in consequence of defects, usually of a technical nature, in matters of procedure which do not affect the real merits of the case; but before acting upon this rule the confirming officer must be satisfied that the accused has not suffered any injustice through any deviation from the AR or through any defect or objection. Whether or not a deviation, etc., is of a substantial nature will often depend upon the circumstances. The court should not allow any technicality to interfere with the accused in the making of his defence.
2. The confirming officer should always direct the attention of all officers concerned to deviations and defects which have been observed and for which they are responsible.
3. It may be convenient to note here that if, after confirmation, the charges or findings thereon are declared to be invalid, the trial must be treated as null, the conviction set aside, the person convicted relieved of all consequences of his trial and the record of conviction erased.
4. As to the substitution of valid finding and sentence for invalid finding and sentence, see AA.s. 163.
5. As to review of SCsM, see AA.s. 162 and notes to AR 133.

#### Offences of witnesses and others

**150. Offences of witnesses and others.**— When any court-martial is of opinion that there is ground for inquiring into any offence specified in sections 59 and 60 and committed before it or brought under its notice in the course of its proceedings, or into any act done before it or brought under its notice in the course of its proceedings, which would, if done by a person subject to the Act, have constituted such an offence, such court-martial may proceed as follows that is to say—

- (1) If the person who appears to have committed the offence is subject to the Act, the court may bring his conduct to the notice of the proper military authority, and may also order him to be placed in military custody with a view to his punishment by an officer exercising authority under section 80, 83, 84 or 85 or to his trial by a court-martial.



- (2) If the person who appears to have done the act is amenable to naval or air force law, the court may bring his conduct to the notice of the proper naval or air force authority, as the case may be.
- (3) If the person who appears to have done the act is not subject to military, naval or air force law, then in the case of acts which would, if done by a person subject to the Act, have constituted an offence under clause (a), (b), (c) or (d) of section 59, the officer who summoned the witness to appear or the presiding officer or officer holding the court, as the case may be, may forward a written complaint to the nearest Magistrate of the first class having jurisdiction, and in the case of acts which would, if done as aforesaid, have constituted an offence under clause (e) of section 59 or section 60, the court, after making any preliminary inquiry that may be necessary, may send the case to the nearest Magistrate of the first class having jurisdiction for inquiry or trial in accordance with [Section 340 of the Code of Criminal Procedure, 1973 (Act 2 of 1974)]<sup>1</sup>

#### NOTES

1. A trial by court-martial is deemed to be a judicial proceeding within the meaning of IPC.s. 193 and 228. A court-martial is deemed to be a court within the meaning of Cr P C ss. 345 and 346 (Cr PC 1973); see AA.s. 152 and notes thereto.

2. An act includes an illegal omission, See AA.s. 3(xxv) and IPC.s. 32.

3. When a person subject to AA commits an offence under any of the clauses of AA.s. 59, or when a corresponding offence is committed by a person subject to naval or air force law or by a civilian, court-martial will often act wisely in accepting an apology sufficient to vindicate their dignity instead of resorting to the more severe measures here indicated. As already pointed out (note 3 to AR 76) the best course to adopt when a person other than the accused, interrupts the proceedings will ordinarily be to order his exclusion from the court.

4. Courts-martial should exercise the greatest discretion in instituting proceedings or in taking measures which may result in the institution of proceedings, against a person subject to AA for the offence specified in AA.s. 60, or against a person subject to naval or air force law, or a civilian for corresponding offence. It is not enough that the court-martial has by its verdict shown that it did not believe the witness, for it may have thought him to be mistaken or, on the balance of probabilities, it may have accepted another version of what took place. Before instituting proceedings as indicated in this rule against a witness, the court should be satisfied that there are good grounds for believing that the witness has wilfully given false evidence on some point which is material to the issue, and that his conviction is likely. The credit of another witness is a point material to the issue.

5. When it is likely that a witness will be prosecuted for giving false evidence, the exact words used, in the language in which the evidence was given, should be recorded; see AR 92(2).

6. In the case of a person subject to AA, the court-martial may, at its discretion, either merely report his conduct to the proper military authority, or may in addition order him into military custody pending disposal of his case.

7. If a person is so ordered into custody, this fact should be mentioned in the report; and it then becomes the duty of the officer receiving the report to see that the case is promptly investigated in accordance with AA.s. 102(1). The report should be in sufficient detail to place the officer in full possession of the facts and enable him to exercise his discretion whether to order trial by court-martial if he is competent to do so, or to direct summary disposal.

8. As to "proper military authority", see AR 2(d). This will depend on the status of the offender and the authority under whose orders the court has been convened.

9. In the case of an SCM, the officer holding the trial would ordinarily report to the next superior authority and a GCM, DCM or SGCM would report to the convening officer, observing in each case the usual channel of correspondence.

10. As explained in the notes to AA.s. 59, the members of a court-martial reporting an officer under this rule are individually disqualified (AR 39(2)(c) and (e)) from trying him on charges arising out of their report. If the officer, to whom the case is finally referred, decides on trial, he must convene a new court for the purpose. For similar reasons it is undesirable that a CO should try by SCM a person under his command who has offended against his authority when holding an SCM or when sitting as a member of a GCM, DCM or SGCM. He could, save in grave emergency, only do so with the sanction of superior authority which should, therefore, as a rule, be withheld, see AA.s. 120(2).

11. A court-martial convened or assembled under AA has, as such, no authority over a person subject to naval or air force law and cannot as a court order him into military custody. Sub rule (2) enables the court

<sup>1</sup> Subs by SRO 17 (E), dated 6th December, 1993

merely to report offences of contempt or of giving false evidence committed by such persons to proper naval or air force authority for disposal under the appropriate Act. See, however, AA.s. 152 and notes thereto.

12. When a person subject to AA commits contempt or gives false evidence before a court-martial other than the one convened under AA, the charge can only be framed under AA.s. 63, as a court-martial convened under an Act other than AA is not a court-martial for the purpose of charges under AA.s. 59 or 60.

13. Sub rule (3) deals with civilian offenders; Cr P C 1973, ss. 195 and 340/341 provide for the institution of proceedings for certain offences against the IPC, on the written complaint of the public servant concerned or of the court before which the offence complained of was committed. A court-martial is a “criminal court” for the purpose of the above sections and is also a “court of justice” for the purpose of the IPC; See Cr PC.s. 6 and IPC.s. 20. The effect of this is that all the acts and omissions which are punishable under AA.s. 59 clause (a), (b), (c) or (d), when committed by persons subject to AA, are, when committed by civilians, offences under IPC .ss. 174, 175, 178 and 179, for which the officer who summoned the witness to appear or the officer conducting the proceedings of the court-martial, as the case may be, can institute proceedings under CrPC.s. 195(1)(a); and that all acts and omissions which are punishable under AA.s. 59(e) and 60 when committed by persons subject to AA are, when committed by civilians, offences under I P C.s. 193, 194 and 228, for which the aggrieved court-martial can institute proceedings under Cr PC 1973, s.340. Before instituting such proceedings, the officer (in the case of offences corresponding to those in AA.s. 59, clauses (a), (b), (c) or (d) and a court-martial (in the case of offences corresponding to those in AA.s. 59(e) or (60) must prima-facie be satisfied that a definite offence has been committed by some definite person or persons against whom proceedings in a criminal court are to be taken. It is not sufficient that the circumstances may raise some sort of suspicion against someone. In such a case the officer or the court-martial, as the case may be should either allow the matter to drop, or should make or hold a preliminary inquiry to see who is to be prosecuted and for what. A court’s decision to institute proceedings must be a judicial one, i.e., either based on what the court has itself heard or seen and considered, or on evidence taken before it and considered. Similarly an officer’s decision to institute proceedings must be a reasonable one, based on, sufficient grounds.

14. The report to the magistrate may be in letter form, and should be sufficiently detailed to place him in full possession of all the materials on which the decision to prosecute was based. It should set forth the name and identity of the person accused and of the witnesses who can substantiate the accusation. A narrative of the events complained of, should be included in the report and a record of the evidence taken in preliminary inquiry (if any) attached.

15. In the case of a person subject to naval or air force law the proper course is to report the offence to the proper naval or air force authority, though proceedings could be taken under sub-rule (3).

#### SECTION 5 — SUMMARY GENERAL COURTS-MARTIAL

The foregoing rules in this Chapter shall not, save as hereinafter mentioned, apply to a summary general court-martial which shall be subject to the following rules, namely—

**151. Convening the court and record of proceedings.**— (1) The court may be convened and the proceedings of the court recorded in accordance with the form in Appendix III, with such variations as the circumstances of each case may require.

(2) The officer convening the court shall appoint or detail the officers to form the court, and may also appoint or detail such officers as waiting members as he thinks expedient. Such officers should have held commissions for not less than one year, but, if any officers are available who have held commissions for not less than three years, they should be selected in preference to officers of less service.

(3) The provost-marshal, an assistant provost marshal, or an officer who is prosecutor or witness for the prosecution shall not be appointed a member of the court, but subject to sub-rule (2), any other available officer may be appointed to sit.

#### NOTES

1. In the convening order, members and waiting members (if any) may be appointed by name, or only their ranks and units may be mentioned. In the latter event, the ranks, names, etc, of the members of the court as constituted, will be recorded in the proceedings.

2. The convening order must be signed personally by the convening officer.

3. Under sub-rule (2), it is not mandatory that a member of an SGCM must have held a commission for not less than one year. An officer with less than one year’s commissioned service can legally sit as a member.

**152. Charge.**— The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Act.

**153. Trial of several accused persons.**—The court may be sworn at the same time to try any number of accused persons then present before it, but except as provided in rule 35, the trial of each accused person shall be separate.

**154. Challenges.**—(1) The names of the presiding officer and members of the court shall be read over to the accused who shall thereupon be asked if he objects to be tried by any of these officers.

(2) Any objection shall be decided as provided for in section 130 and rule 44—the vacancies being filled from among the waiting members (if any), or by fresh members being appointed by the convening officer.

**155. Swearing or affirming the court, judge-advocate, etc.**—The provisions of rules 45, 46 and 47 relating to administering and taking of oaths and making of affirmations shall apply to every summary general court-martial.

**156. Arraignment.**—When the court is sworn or affirmed, the judge-advocate (if any) or the presiding officer shall state to the accused then to be tried, the offence with which he is charged with, if necessary, an explanation giving him full information of the act or omission with which he is charged and shall ask the accused whether he is guilty or not guilty of the offence.

#### NOTES

1. As to objection by accused to charge, see AR 49 which by AR 164 is applied, so far as practicable, to an SGCM. As to responsibility of presiding officer, see AR 76.

2. As to general plea of “Guilty” Or “Not Guilty”, see AR 52 and notes: as to procedure after plea of “Guilty”, see AR 54. Both these rules are, by AR 164 applied, so far as practicable, to an SGCM.

3. A plea of “Guilty” will not be accepted by the court if the charge or charges upon which an accused is arraigned render him liable, on conviction, to be sentenced to death. If such plea is offered, the court will enter plea of “Not Guilty” and proceed with the trial accordingly. See AR 52(4).

**157. Plea of jurisdiction.**—If a special plea to the general jurisdiction is offered by the accused, and is considered by the court to be proved, the court shall report the same to the convening officer.

#### NOTE

See AR 51, which by AR 164 is applied, so far as practicable, to an SGCM

**158. Evidence.**—(1) The witnesses for the prosecution will be called and the accused shall be allowed to cross-examine them and to call any available witnesses for his defence.

(2) An oath or affirmation as laid down in rule 140 shall be administered to every witness, if so required by the Act, before he gives his evidence, by one of the persons specified in that rule.

#### NOTE

Although by AR 164 only a limited number of the foregoing rules are applied to SGCM, so far as practicable, the procedure to be adopted at an SGCM should be the same as at a GCM or DCM.

**159. Defence.**—(1) The accused shall be asked what he has to say in his defence, and shall be allowed to make his defence. He may be allowed to have any person to assist him during the trial, [\*\*\*]<sup>1</sup>

(2) The court or the judge-advocate, if any, may question the accused on the case for the purpose of enabling him to explain any circumstances appearing in his statement or in the evidence against him. The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving answers to them which he knows not to be true [\*\*\*]<sup>1</sup>.

<sup>1</sup>Omitted by SRO 17 (E), dated 6th December, 1993

## NOTES

1. See note to AR 158.
2. As to rights of the accused to prepare his defence, see AR 33 which by AR 164 is applied, so far as practicable, to an SGCM.
3. See ARs 95 to 101. If the person assisting is an officer subject to AA or a counsel, (see AR 101(2)), he may be allowed full privileges of address, etc.
4. As to questioning of accused by the court or JA, see note 3 to AR 58.

**160. Record of the Evidence and Defence.**—(1) The judge-advocate (if any), or the presiding officer shall take down or cause to be taken down a brief record of the evidence of the witnesses at the trial and of the defence of the accused; the record so taken down shall be attached to the proceedings.

(2) If it appears to the convening officer that military exigencies or other circumstances prevent compliance with sub-rule (1), he may direct that the trial will be carried on without any such brief record being taken down.

(3) If the accused pleads “Guilty” the summary [\*\*\*]<sup>1</sup> of evidence, if any, may be read and attached to the proceedings, and it shall not be necessary for the court to hear witnesses for the prosecution, respecting matters contained in the summary [\*\*\*]<sup>1</sup> of evidence so read.

## NOTE

It would hardly ever be necessary for the convening officer to give such a direction as is mentioned in sub-rule (2). If he does so, he must record it in his order convening the court and state shortly the exigencies or other circumstances which appear to him to prevent compliance with this rule.

**161. Finding and sentence.**— The court shall then be closed to consider its finding. If the finding on any charge is “Guilty”, the court may receive any evidence as to previous convictions and character which is available. The court shall then deliberate in closed court as to its sentence.

## NOTES

1. As to voting of members, see AA.s. 132(1) and (4).
2. For votes required before a sentence of death can be passed, see AA.s. 132(3).
3. ARs 61 (consideration of finding), 62 (form, record and announcement of finding), 64 (recommendation to mercy) and 67 (announcement of sentence) are applied by AR 164, so far as practicable, to trials by SGCM.

**162. Signing and transmission of proceedings.**— Upon the court arriving at a finding of “Not guilty”, or awarding the sentence in case of having arrived at a finding of “Guilty”, the presiding officer shall date and sign the finding or sentence, as the case may be. The signature shall authenticate the whole of the proceedings and the proceedings upon being signed by the judge-advocate, if any, shall at once be transmitted to the confirming officer, for confirmation.

## NOTES

1. Every finding and sentence of an SGCM is subject to confirmation; see AA.s. 153.
2. As to retention to serve in the ranks of a person sentenced on active service to imprisonment or dismissal, see AA.s. 78.

**163. Adjournment.**— (1) A summary general-court-martial may adjourn from time to time and from place to place and may when necessary view any place.

(2) The proceedings shall be held in open court, in the presence of the accused except on any deliberation among the members when the court may be closed.

## NOTE

As to adjournment, see AR 82 and notes thereto.

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<sup>1</sup> Omitted by SRO 17 (E), dated 6th December, 1993

**164. Application of rules.**—The foregoing rules, namely rules 22 (hearing of charge), 23 (procedure for taking down the summary of evidence), 24 (remand of accused), [\*\*\*]<sup>1</sup> 27 (delay report), 33 (rights of accused to prepare defence), 34 (warning of accused for trial), 36 (suspension of rules on grounds of military exigencies or the necessities of discipline), 38 (adjournment for insufficient number of officers), 49 (objection by accused to charge), 51 (special plea to the jurisdiction), 52 (general plea of ‘Guilty’ or ‘Not guilty’), 53 (plea in bar), 54 (procedure after plea of “Guilty”), 55 (withdrawal of plea of ‘Not guilty’), 61 (consideration of finding), 62 (form, record and announcement of finding), 64 (procedure on conviction), 65 (sentence), 66 (recommendation of mercy), 67 (announcement of sentence), 71 (promulgation), 72 (mitigation of sentence on partial confirmation), 73 (confirmation notwithstanding informality in, or excess of, punishment), 74 (member or prosecutor not to confirm proceedings), 76 (responsibility of presiding officer), 77 (power of court over address of prosecutor and accused), 78 (procedure on trial of accused persons together), 80 (sitting in closed court), [80-A (Court-martial to be public)]<sup>2</sup>, 84 (proceedings on death or illness of accused), 85 (death, retirement or absence of presiding officer), 86 (presence throughout of all members of the court), 94 (transmission of proceedings after finding), 95 (defending officer and friend of accused), [96 (counsel allowed in certain general and district courts-martial), 97 (requirement for appearance of counsel) 98 (counsel of prosecution), 99 (counsel for accused)],<sup>2</sup> 100 (general rules as to counsel), 101 (qualification of counsel)]<sup>1</sup>, 102 (disqualification of judge-advocate), 103 (invalidity in the appointment of judge-advocate), 104 (substitute on death, illness, or absence of judge-advocate), 105 (powers and duties of judge-advocate), 145 (finding of insanity), 146 (preservation of proceedings), 147 (right of person tried to copies of proceedings), 148 (loss of proceedings), 149 (validity of irregular procedure in certain cases), shall, so far as practicable, apply as if a summary general court-martial were a district court-martial.

#### NOTE

See also ARs 152, 154(2), 155 and 158(2).

**165. Evidence of opinion of convening officer.**—Any statement in an order convening a summary general court-martial as to the opinion of the convening officer shall be conclusive evidence of that opinion, but this rule shall not prejudice the proof at any time of any such opinion when not so stated.

#### NOTE

See IEA.s 4 for the meaning of “conclusive evidence”.

### SECTION 6—EXECUTION OF SENTENCES

**166. Committal Warrants.**—A warrant for the committal of a person sentenced by a court-martial to a prison, under the provision of section 168 and sub-section (2) of section 169, shall be in one of the forms given in Appendix IV. Such warrant shall be signed and despatched by the commanding officer of the prisoner or by any higher authority or his staff officer and forwarded to the proper prison authority.

#### NOTE

See AR 4. for presumption as to signature on warrants, see AA.s. 140.

**167. Warrants under Section 173.**—Any warrant issued under the provisions of section 173 shall be in one of the forms given in Appendix IV, and shall be signed by the officer making the order in pursuance of which such warrant is issued, or by his staff officer, or by the commanding officer of the unit to which the person undergoing sentence belonged.

<sup>1</sup> Omitted by SRO 17 (E), dated 6th December, 1993

<sup>2</sup> Sub. by SRO17 (E), dated 6th December, 1993

## NOTE

See note to AR 166.

**168. Sentence of Cashiering or Dismissal.**—(1) A sentence of cashiering or dismissal awarded by a court-martial shall take effect from the date on which the sentence is promulgated to the person under sentence, or except in the case of an officer, from such subsequent date as may be specified by the commanding officer at the time of such promulgation.

(2) When dismissal is combined with imprisonment which is to be carried out in a military prison or in military custody [\*\*\*]<sup>1</sup> the dismissal shall not take effect until, the date on which the prisoner is released from a military prison or from a military custody, [\*\*\*]<sup>1</sup>

(3) When cashiering or dismissal is combined with imprisonment for life or with imprisonment which is to be carried out in a civil prison, the cashiering or dismissal shall not take effect until the date on which the prisoner is received into a civil prison.

## NOTES

1. Under AA.s. 23, a discharge certificate must be furnished to every JCO, WO or enrolled person who is dismissed from the service (see also AR 12). An officer is not furnished with a discharge certificate.

2. A sentence of cashiering or dismissal awarded by a court-martial to an officer takes effect from the date of promulgation, or when combined with imprisonment, from the date on which the prisoner is received into a civil prison. The sentence is notified in the Gazette of India.

3. It may sometimes be expedient for a CO, in order to keep a person sentenced to dismissal (other than an officer) subject to AA for a short period, to specify a date subsequent to the date of promulgation. If he considers such action is desirable, he must do so at the time of the promulgation of the sentence to the person and he should record the date he specifies in the minute of promulgation. When a CO exercises this option of specifying a subsequent date, the date specified must be strictly limited by the requirements of the case. For instance, in the case of a person sentenced out of India to dismissal alone, or to dismissal combined with imprisonment which is carried out locally either in military custody or for special reasons in local civil custody (AA.s. 171), the subsequent date might be “date of disembarkation” or “date of embarkation” according to whether the intention is to despatch the person to India on a transport or by a private vessel. It is obviously desirable to keep the person subject to military discipline while travelling on a transport or until he can be despatched to India. If the person is to be sent by a transport, the CO can enter in the discharge certificate “date of disembarkation” as the date from which the dismissal takes effect.

4. The effect of sub-rule (3) is that a prisoner under sentence of cashiering or dismissal combined with imprisonment which is carried out in a civil prison remains subject to AA until he is received into a civil prison. The CO should enter on the discharge certificate the date of admission into a civil prison as the date from which the dismissal takes effect, or in the case of an officer, report the date of admission to the proper military authority.

5. AA will apply to an offender who upon conviction by court-martial is sentenced to imprisonment and committed to civil prison, during the term of his imprisonment, though he is cashiered or dismissed from the regular Army or otherwise has ceased to be subject to AA and he may be kept, removed, imprisoned and punished as if he continued to be subject to AA; see AA.s. 123 and notes thereto.

**169. Custody of Person under Sentence of Death.**—When a person is sentenced by a court-martial to suffer death, the commanding officer for the time being of such person may, if he thinks fit, by a warrant in one of the forms in Appendix V, commit the said person for safe custody in a civil prison pending confirmation or the carrying out of the sentence.

<sup>1</sup> Omitted by SRO 17 (E), dated 6th December, 1993



**[170. Opportunity for petition against sentence of death.]—**(1) While confirming the sentence of death, the confirming authority shall specify the period within which the person sentenced may, after the sentence has been promulgated to him, submit a petition against the finding or sentence against him of the court-martial.

(2) The person against whom a sentence of death has been confirmed shall at the time of promulgation, be informed of his rights under sub-section (2) of section 164 and of the period specified by the confirming authority within which he may, if he so wishes to do, submit a petition against the finding or sentence of the court-martial.

(3) Every petition against a finding or sentence submitted by a person against whom a sentence of death has been confirmed, and every order in respect of such petition shall be transmitted, whereas confirming authority is the Chief of the Army Staff or the Central Government, through the Adjutant General at the Army Head-quarters and in any other case, through the confirming officer.

(4) A sentence of death shall not be carried into effect until the expiry of the period specified by the confirming authority under sub-rule (1) or if, within the period so specified, the person under sentence submits a petition against the finding or sentence of the court-martial, until the authority legally competent to dispose of such petition finally, after considering the petition, orders that the sentence of death may be carried into effect.<sup>1</sup>

**[170A. Death Warrant.]—**(1) The officer commanding the army, army corps or division or an officer commanding forces in the field shall nominate a provost marshal or other officer not below the rank of Lieutenant Colonel who shall be responsible for the due execution of the sentence of death passed under the Act, and shall issue to such officer the death warrant in the relevant form contained in Appendix V.

(2) The officer specified in sub-rule (1) shall not issue the death warrant until he is satisfied that having regard to the provision of rule 170, the sentence of death may be carried into effect.

(3) No sentence of death passed under the Act shall be carried into effect until the death warrant has been received by the provost marshal or other officer nominated under sub-rule (1).

(4) If the authority specified in sub-rule (1) is of the opinion that the sentence of death be carried out in a civil prison, he shall forward a warrant in one of the forms in Appendix V together with an order of the confirming authority certifying the confirmation of the sentence, to the civil prison for execution of the sentence.<sup>1</sup>

**[170B. Execution of sentence of death.]—**(1) On receipt of the death warrant, the provost marshal or other officer, nominated under sub-rule (1) of rule 170A shall :—

- (a) inform the person sentenced as soon as possible of the date on which the sentence will be carried out;
- (b) if the person sentenced has been committed to a civil prison under rule 169, obtain the custody of his person by issuing a warrant in one of the forms in Appendix V; and
- (c) proceed to carry out the sentence as required by the death warrant and in accordance with any general or special instructions which may from time to time be given by or under the authority of the Chief of the Army Staff.

(2) During the execution of sentence of death passed under the Act, no person except those specified, below, shall be present without the authority of the officer who issued the death warrant. The following persons shall attend the execution of the sentence of death:-

- (a) the provost marshal or other officer who is responsible for the due execution of the sentence in accordance with these rules;
- (b) a commissioned medical officer of the armed forces of the Union;

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<sup>1</sup> Subs by SRO 17 (E), dated 6th December, 1993

- (c) an officer nominated by the officer who issued the death warrant, who is able to identify the person under sentence as the person described in the death warrant and as the person who was tried and sentenced by the court-martial mentioned therein;
- (d) such non-commissioned officers as may be detailed by the provost marshal or the other officer aforesaid for escort and security purposes or to assist in the execution;
- (e) if the execution is carried into effect in an army unit, the officer for the time being in command of such unit.

(3) After the sentence of death has been carried into effect, the provost marshal or other officer nominated under sub-rule (1) of rule 170A or the Superintendent of the civil prison, as the case may be, shall complete or cause to be completed parts II and III of the death warrant, and shall, without unnecessary delay return the completed death warrant to the officer who had issued the same]<sup>1</sup>.

**171. Procedure on Commutation of Sentence of Death**—If a sentence of death is commuted under the Act or if the person sentenced to death is pardoned, and

- (a) if he has been committed to a civil prison under a warrant issued under rule 169, a further warrant in one of the forms given in Appendix V shall be issued by the commanding officer of such person;
- (b) if he has been detained in military custody, any warrant which may be necessary to give effect to the sentence as so commuted, shall be issued in one of the forms given in Appendix IV.

**172. -176.** [\*\*\*]<sup>2</sup>

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<sup>1</sup> Inserted by SRO 17 (E), dated 6th December, 1993

<sup>2</sup> Omitted by SRO 17(E) dated 6 December, 1993.

## CHAPTER VI

### COURTS OF INQUIRY

**[177. Courts of Inquiry.]**—(1) A court of inquiry is an assembly of officers or of junior commissioned officers or of officers and junior commissioned officers, warrant officers or non-commissioned officers, directed to collect evidence, and if so required to report with regard to any matter which may be referred to them.

(2) The court may consist of a Presiding Officer, who will either be an officer or a junior commissioned officer, and of one or more members. The Presiding Officer and members of court may belong to any Regt or Corps of the service according to the nature of the investigation.

(3) A court of inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps.]<sup>1</sup>

#### NOTES

1. See generally as to courts of inquiry Regs Army paras 516 to 526. For disqualification of members of courts of inquiry for serving on subsequent courts-martial, see AR 39(2)(c).

2. A court of inquiry has no power to compel the attendance of civilian witnesses. See AA.s. 135(1).

3. The court of inquiry should normally consist of three members.

**178. Members of Court not to be Sworn or Affirmed.**—The members of the court shall not be sworn or affirmed, but when the court is a court of inquiry on recovered prisoners of war, the members shall make the following declaration—

“I do declare upon my honour that I will duly and impartially inquire into and give my opinion as to the circumstances in which..... became a prisoner of war, according to the true spirit and meaning of the regulations of the regular Army; and I do further declare, upon my honour that I will not on any account, or at any time disclose or discover my own vote or opinion or that of any particular member of the court, unless required to do so by competent authority”.

**179. Procedure.**—(1) The court shall be guided by the written instructions of the authority who assembled the court. The instructions shall be full and specific and shall state the general character of the information required. They shall also state whether a report is required or not.

(2) The officer who assembled the court shall, when the court is held on a returned prisoner of war or on a prisoner of war who is still absent, direct the court to record its opinion whether the person concerned was taken prisoner through his own wilful neglect of duty, or whether he served with or under, or aided the enemy; he shall also direct the court to record its opinion in the case of a returned prisoner of war; whether he returned as soon as possible to the service and in the case of a prisoner of war still absent whether he failed to return to the service when it was possible for him to do so. The officer who assembled the court shall also record his own opinion on these points.

(3) Previous notice should be given of the time and place of the meeting of a court of inquiry, and of all adjournments of the court, to all persons concerned in the inquiry except a prisoner of war who is still absent.

(4) The court may put such questions to a witness as it thinks desirable for testing the truth or accuracy of any evidence he has given and otherwise for eliciting the truth.

(5) The court may be re-assembled as often as the officer who assembled the court may direct, for the purpose of examining additional witnesses, or further examining any witness, or recording further information.

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<sup>1</sup> Substituted by SRO 8 (E) dated 23 June, 2003

[(5A) Any witness may be summoned to attend by order under the hand of the officer assembling the court. The summons shall be in the Form provided in Appendix III.]<sup>1</sup>

(6) The whole of the proceedings of a court of inquiry shall be forwarded by the presiding officer to the officer who assembled the court.

#### NOTES

1. As to the authorities who can remit the forfeiture of pay and allowances incurred by absence as a prisoner of war, see AR 195(c). If the officer who assembles the court is not one of these authorities, he should forward the proceedings with his recommendation, to one of these authorities. A court of inquiry on a prisoner of war who is still absent may be assembled in order to assist the authorities prescribed in AR, 195(c) and 196, in determining what remission of forfeiture of pay and allowances shall be ordered and what provision in terms of AA.ss. 98 and 99 shall be made for the dependants of such prisoner of war. A second court of inquiry must be assembled as soon as possible after the return of the prisoner of war. See Regs Army para 522.

2. For form of oath and affirmation, see AR 140.

**180. Procedure when character of a person subject to the Act is involved.**—Save in the case of a prisoner of war who is still absent whenever any inquiry affects the character or military reputation of a person subject to the Act, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation and producing any witnesses in defence of his character or military reputation. The presiding officer of the court shall take such steps as may be necessary to ensure that any such person so affected and not previously notified receives notice of and fully understands his rights, under this rule.

#### NOTE

Whenever it appears possible that the character or military reputation of a person subject to AA may be affected as the result of the court of inquiry, the authority who assembles the court of inquiry will take all necessary steps to ensure that the provisions of this rule are observed. The ultimate responsibility of ensuring that they are observed in every case will, however, rest upon the presiding officer of the court of inquiry, and should it transpire during the sitting of the court that the character or military reputation of any person subject to AA is affected by the evidence put forward, the presiding officer, will immediately arrange for such person to be afforded the full facilities of the rule, adjourning the court if necessary for the purpose of securing his attendance.

**181. Evidence when to be taken on oath or affirmation.**—Evidence shall be recorded on oath or affirmation when a court of inquiry is assembled—

- (a) on a prisoner of war, or
- (b) to inquire into illegal absence under section 106, or
- (c) in any other case when so directed by officer assembling the court.

*Explanation.*—The court shall administer the oath or affirmation to witnesses as if the court were a court-martial.

**[182. Proceedings of court of inquiry not admissible in evidence.**—The proceedings of a court of inquiry, or any confession, statement, or answer to a question made or given at a court of inquiry shall not be admissible in evidence against a person subject to the Act, nor shall any evidence respecting the proceedings of the court be given against any such person except upon the trial of such person for wilfully giving false evidence before the court :

Provided that nothing in this rule shall prevent the proceedings from being used by the prosecution or the defence for the purpose of cross-examining any witness.]<sup>2</sup>

#### NOTE

See. AA.s. 60 and notes thereto.

**183. Court of inquiry as to illegal absence under section 106.**—(1) A court of inquiry under section 106 shall, when assembled, require the attendance of such witnesses as it thinks sufficient to prove the absence and other facts specified as matters of inquiry in that section.

<sup>1</sup> Inserted by SRO 17(E), dated 6th December, 1993

<sup>2</sup> Subs by SRO 17(E), dated 6th December, 1993

(2) It shall take down the evidence given in writing and at the end of the proceedings shall make a declaration of the conclusions at which it has arrived in respect of the facts it is assembled to inquire into.

(3) The commanding officer of the absent person shall enter in the court-martial book of the corps or department, a record of the declaration of the court, and the original proceedings will be destroyed.

(4) The court of inquiry shall examine all witnesses who may be desirous of coming forward on behalf of the absentee, and shall put such questions to them as may be desirable for testing the truth or accuracy of any evidence they have given and otherwise for eliciting the truth, and the court in making its declaration shall give due weight to the evidence of all such witnesses.

(5) An oath or affirmation shall be administered to the witnesses in the manner specified in rule 181.

#### NOTES

1. See notes to AA.s. 106
2. See notes to AR 177
3. The court of inquiry declares that (number, rank, name) illegally absented himself for a period of 30 clear days, excluding the day on which the absence commenced and that on which the court of inquiry assembles.
4. The court of inquiry in making its declaration will follow the wording shown below. An exact reproduction of the declaration will be entered in the court-martial book. It should be free from alteration or erasure.

#### DECLARATION

The court declares that (number, rank, name and unit)..... illegally absented himself without leave (or other sufficient cause) at .....(station or place) on the .....; that he is still so absent, and that on the (date on which the inventory of kit was taken)..... he was deficient, and that he is still deficient of the following articles (value of equipment and clothing to be stated).

.....Value Rs.....

.....Value Rs.....

Name of the

Presiding officer

Presiding officer

Members

and members

5. In framing a charge of losing by neglect under AA.s. 54 (b), the date of taking the inventory should be averred in the particulars.

6. Before a court of inquiry proceeds to find deficiencies, it will require evidence:-

- (a) that the absentee has been at some time previously in possession of a complete kit, or at any rate, of the articles alleged to be deficient;
- (b) that an inventory of his kit has been taken and at the taking of the inventory certain specified articles were deficient;
- (c) that none of the articles have since been recovered (any articles recovered will, of course, be omitted.)

7. When the declaration is to be produced in evidence at a court-martial, a copy will be made on IAFD-918 which is admissible under AA.s. 142 (4), and will be produced instead of the court-martial book. IAFD-918 must be a correct extract from the court-martial book and free from alteration or erasure.

8. As to form of oath see AR 140.

**[184. Right of certain persons to copies of statements and documents—**(1) Any person subject to the Act who is tried by a court-martial shall be entitled to copies of such statements and documents contained in the proceedings of a court of inquiry, as are relevant to his prosecution or defence at his trial.

(2) Any person subject to the Act whose character or military reputation is affected by the evidence before a court of inquiry shall be entitled to copies of such statements and documents as have a bearing on his character or military reputation as aforesaid, unless the Chief of the Army Staff for reasons recorded by him in writing, orders otherwise.]<sup>1</sup>

### **Losses or Thefts of Arm**

**185. Court of inquiry when rifles, etc., are lost or stolen.—**(1) Whenever any weapon or part of a weapon, which forms part of the equipment of a squadron, battery, company or other similar unit, and in respect of the loss or theft of which a fine may be imposed under the rule 186 is lost or stolen, a court of inquiry shall be assembled, under the orders of the officer commanding the army, army corps, division or independent brigade, to investigate the circumstances under which the loss or theft occurred.

(2) The officer who assembled the court shall direct it to record an opinion as to the circumstances of the loss or theft.

**[186. Collective Fines may be imposed.—**(1) The officer commanding the army, army corps, division or independent brigade shall then record his opinion on the circumstances of the loss or theft, and may impose for each weapon or part of a weapon lost or stolen, collective fines to the extent of the current official prices of such weapons or part of weapons on the junior commissioned officers, warrant officers, non-commissioned officers, and men of such unit or upon so many of them as he considers should be held responsible for the occurrence.]<sup>2</sup>

(2) Such fine will be assessed as a percentage on the pay of the individuals on whom it falls.

### **NOTE**

See AA.s. 89 and notes thereto.

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<sup>1</sup> Subs by SRO 44 dated 24 January, 1985

<sup>2</sup> Subs by SRO 17 (E), dated 6th December, 1993



## CHAPTER VII

## PRESCRIBED OFFICERS, AUTHORITIES AND OTHER MATTERS

**187. ‘Corps’ prescribed under Section 3(vi).—**(1) Each of the following separate bodies of persons subject to the Act shall be a “Corps” for the purposes of Chapter III and section 43(a) of the said Act and of [Chapters II and III]<sup>1</sup> of these rules, [except rule 13]<sup>2</sup>, namely:—

- (a) President’s Body Guard.
- (b) The Armoured Corps, Horsed Cavalry Regiments, including Training Centres and non-combatants.
- (c) The Regiment of Artillery.
- (d) The Corps of Engineers including non-combatants.
- (e) The Corps of Signals including non-combatants.
- (f) Each regiment or each ungrouped battalion (as the case may be) of Infantry, or, in the case of grouped Gorkha Regiments, each group of Infantry including non-combatants.
- (g) Each parachute battalion.
- (h) The Army Service Corps (including postal).
- (i) The Remount, Veterinary & Farms Corps.
- (j) The Army Medical Corps.
- (k) The Army Dental Corps.
- (l) The Army Ordnance Corps.
- (m) The Corps of Electrical & Mechanical Engineers.
- (n) The Technical Development Establishments.
- (o) The Intelligence Corps.
- (p) The Corps of Military Police.
- (q) The Pioneer Corps.
- (r) The Defence Security Corps.
- (s) The Army Education Corps.
- (t) The Army Physical Training Corps.
- (u) The General Service Corps.
- (v) The Frontier Defence Corps.
- (w) Each Boys Battalion.
- (x) Gorkha Boys Company.
- (y) Any other separate body of persons subject to the Act, employed on any service and NOT attached to any of the above Corps or to any department.

(2) Every unit in which a court-martial book is maintained shall be a “Corps” for the purposes of section 106 and rule 183.

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<sup>1</sup>Inserted by SRO 1, dated 22nd Dec, 1961

<sup>2</sup>Substituted by SRO 1, dated 12th March, 1964.

(3) For the purposes of every other provision of the said Act and of these rules each of the following separate bodies shall be “corps” :—

- (a) Every battalion.
- (b) Every company which does **NOT** form part of battalion.
- (c) Every regiment of cavalry, armoured corps or artillery.
- (d) Every squadron or battery which does **NOT** form part of regiment of cavalry, armoured corps or artillery.
- (e) Every school of instruction, training centre, or regimental centre.
- (f) Every other separate unit composed wholly or partly of persons subject to the Act.

#### NOTES

1. The effect of this rule is that each of the bodies specified in sub-rule (1) is a “corps” for the purposes of enrolment, attestation, and discharge, except for AR 13. For all other purposes (except those of AA.s. 106) the bodies mentioned in sub-rule (3) are “corps”.

2. The effect of AR 7 read with the prescribed forms of enrolment in Appendix I is that every person enrolled under AA must be enrolled in some corps, as defined in sub-rule (1), or in some department as defined in AA.s. 3(ix).

**188. Conditions prescribed under Section 3(xviii) (f).—**In the Act and in these rules, the expression ‘officer’, in relation to a person subject to the Act, includes a person holding a commission in the Indian Navy or the Air Force, when he is serving under any of the following conditions, namely :—

- (a) when he is a member of a body of the regular Army, acting with a body of the Indian Navy or the Air Force which is on active service;
- (b) when he is being conveyed on any vessel or aircraft employed as a transport or troop ship;
- (c) when he is serving in or is a patient in any hospital or medical unit in which any officer of the Indian Navy or the Air Force is on duty or is a patient;
- (d) when he is a member of a body of the regular Army acting in an emergency with a body of the Indian Navy or the Air Force and an order in writing is made by the officers commanding the bodies concerned stating that an emergency exists and that it is necessary for officers of the Indian Navy or the Air Force to exercise command over persons subject to the Act. A copy of every such order shall forthwith be sent to the Central Government;
- (e) when he is serving in any place in which or with any body of the regular Army with which, there is present any officer of the Indian Navy or the Air Force and the Central Government has by special order declared that it is necessary for officers of the Indian Navy or the Air Force to exercise command over persons subject to the Act in that place or with that body of the regular Army.

#### NOTES

1. For active service, see AA.ss. 3(i) and 9.

2. For the declaration made, by the Central Government under clause (e) see Government of India, Ministry of Defence, SRO No 34 dated 5 Jan 63.

**189. Prescribed Officer under Section 7(1).**—The prescribed officer for the purposes of sub-section (1) of section 7 shall be the officer commanding the army, army corps, division, or brigade or any equivalent formation with which the person subject to the Act under clause (i) of sub-section (1) of section 2 is for the time being serving.

**190. Prescribed form under Section 13.**—The prescribed form for the purposes of section 13 shall be the same as set forth, in Appendix I.

**191. Prescribed Officer under Section 78.**—The prescribed officer for the purposes of section 78 shall be the officer commanding the forces in the field, or, in the case of a sentence which he confirms or could have confirmed or which did not require confirmation, the officer commanding the army corps, division, brigade or any detached portion of regular Army within which the trial was held.

**192. Prescribed extent of Punishments under Section 80.**—Subject to the other provisions of the Act, a commanding officer or other officer as is specified under section 80, may,—

- (i) if not below field rank, award punishments specified in section 80 to the full extent;
- (ii) if below field rank, award imprisonment and detention upto seven days and other punishments to the full extent. An officer having power not less than an officer commanding a division may, however, empower such officer to award imprisonment and detention to the full extent.

[Provided that where the punishment awarded consists of reduction to a lower grade of pay, such reduction shall be to the immediately next lower grade and shall not be effective for a period exceeding one year.]<sup>1</sup>

**[193. Prescribed officer under Sections 90 (i) and 91 (i).**—The prescribed officer for the purposes of clause (i) of section 90 and clause (i) of section 91 shall be the Chief of the Army Staff or the officer commanding the Army.]<sup>2</sup>

**194. Prescribed officer under Section 93.**—The prescribed officer for the purposes of section 93 shall be, in the case of an officer, the Chief of the Army Staff or the officer commanding an Army, and, in the case of a person other than an officer, the officer empowered to convene a court-martial for his trial.

**195. Prescribed Authorities under Section 97.**—Any penal deduction from the pay and allowances of a person subject to the Act, made under Chapter VIII thereof, may be remitted as hereinafter provided, that is to say :—

- (a) a penal deduction from the pay and allowances of any such person may be remitted by the Central Government,
- (b) the commanding officer of any such person, other than an officer, who has been absent without leave for a period not exceeding five days may, unless the person is convicted by a court-martial on a charge for such absence, remit the forfeiture of pay and allowances to which that absence renders him liable.
- (c) a forfeiture of pay and allowances incurred by any such person owing to his absence as a prisoner of war may, (unless it shall have been proved before a court of inquiry that he was taken prisoner through his own wilful neglect of duty, or

<sup>1</sup> Substituted by SRO 215 dated 17 June, 1965

<sup>2</sup> Substituted by SRO 17 (E), dated 6th December, 1993

that he served with or under, or aided, the enemy or that he did not, as soon as possible, return to the service) be remitted by the Chief of the Army Staff, by the officer commanding an army, army corps, division or independent brigade, or by the officer commanding the forces in the field.

**196. Prescribed Authorities under Sections 98 and 99.**—The prescribed authorities for the purposes of sections 98 and 99 shall be—

- (i) in the case of officers of the Army Medical Corps, Director General Armed Forces Medical Services,
- (ii) in the case of all other officers, the Director of Personal Services, and
- (iii) in all other cases, the officer not below the rank of Lieutenant-Colonel commanding a Training Battalion, Training Centre, Depot or Record Office who maintains the accounts of the individual, or any superior authority.

**197. Prescribed Officer under Section 107 (1)**—The prescribed officer for the purposes of sub-section (1) of section 107 shall be the officer commanding an army, army corps, division or independent brigade or an officer commanding the forces in the field.

**197-A. Prescribed Officer under Section 125.**—The prescribed officer for the purpose of section 125 of the Act shall except in cases falling under Section 69 of the Act in which death has resulted, be the officer commanding the brigade or station in which the accused person is serving.

**198. Prescribed Officer under Section 142.**—The prescribed officer for the purposes of sub-section (1) of section 142 shall be the officer commanding the corps, department or detachment to which the person appears to have belonged or alleges that he belongs or had belonged.

**199. Prescribed Manner of Custody and Prescribed Officers under Sections 145 and 146.**—(1) The prescribed officer for the purposes of section 146 shall be—

- (a) in the case of trial by summary court-martial the commanding officer of the corps. Department or Detachment to which the accused persons belongs, or any authority superior to the commanding officer;
- (b) in the case of trial by any other court-martial, the convening officer or any authority superior to him.

(2) Where an officer who proposes to act as a prescribed officer under sub-rule (1) is under the command of the officer who has taken action in the case under sub-section (4) of section 145, he shall ordinarily obtain the approval of such officer before he acts; but, if he is of opinion that military exigencies, or the necessities of discipline, render it impossible or inexpedient to obtain such approval, he may act without obtaining such approval, but shall report his action and the reasons therefore to such officer.

(3) For the purposes of sub-section (4) of section 145 the manner in which an accused person shall be kept in custody shall be as follows:-

The accused shall be confined in such manner as may, in the opinion of the proper military authority, be best calculated to keep him securely without unnecessary harshness, as he is not to be considered as a criminal but as a person labouring under a disease.

**200. Prescribed Officer under Section 162.**— The prescribed officer for the purposes of section 162 shall, whenever any division or brigade is temporarily withdrawn from its territorial area, be the officer, not being below the rank of field officer, commanding the corresponding divisional or brigade area, within which the trial is held:

Provided that, when the officer who held the trial is himself the commander of such area, he shall forward the proceedings to superior authority.

When the trial is held on board a ship the prescribed officer shall be the officer commanding the troops on board the ship, or the officer who would have had power to deal with the proceedings had the trial been held at the port of disembarkation:

Provided that, when the officer who held the trial is himself the officer commanding the troops on board the ship, he shall forward the proceedings to the authority at the port of disembarkation.

**201. Prescribed Officer under Section 164(2).**— The prescribed officer for the purposes of sub-section (2) of section 164 shall be any officer superior in command to the commanding officer and in the case of a summary court-martial, any officer superior in command to the officer who held the summary court-martial, provided that such superior officer has power not less than a brigade commander.

**202. Prescribed Officer under Section 165.**— The prescribed officer for the purposes of section 165 shall be the officer commanding an army, army corps, division or brigade in respect of proceedings confirmed by him or by a person under his command.

**203. Prescribed Officer under Section 169.**—The prescribed officer, under sub-section (1) of section 169, for the purposes of directing whether the sentence shall be carried out by confinement in a civil prison or by confinement in a military prison, shall be, in the case of a sentence which has been confirmed, any higher authority than the confirming officer, and in the case of a sentence which does not require confirmation, any higher authority to the officer holding the trial.

**204. Prescribed Officer under Section 179.**—The prescribed officer for the purposes of section 179 shall be—

- (a) as regards persons undergoing sentence in a civil prison or any other place, the officer commanding the army, army corps, division, or independent brigade within the area of whose command the prisoner subject to such punishment may for the time be;
- (b) as regards persons convicted on active service, the officer commanding the forces in the field.

#### **Authorised Deductions**

**205. Authorised Deductions.**—The following deductions may be made from the pay, non-effective pay and all other emoluments payable to a person subject to the Act, namely :—

- (a) upon the general or special order of the Central Government, any sum required to meet any public claim there may be against him, any regimental debt that may be due from him or any regimental claim;
- (b) any sum required to meet compulsory contributions to any provident fund or any benevolent or other fund approved by the Central Government.

*Explanation.*—(i) “Public Claim” means any public debt or disallowance including any over-issue; or a deficiency or irregular expenditure of public money or store of which,

after due investigation, no explanation satisfactory to the Central Government is given by the person who is responsible for the same.

(ii) The aforesaid deductions shall be in addition to those specified in the Act.

#### NOTES

1. When a person subject to AA accepts his liability in respect of regimental dues, it becomes a regimental debt. When he does not so accept his liability, it becomes a regimental claim.

2. See AA.s. 25 and notes thereto. This rule lays down the deduction authorised under AA.

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## APPENDIX I

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\*This Appendix consists of Enrolment Form (IAFK-1162). This has not been reproduced.

See SRO 484 dated 27 Nov 1954 (as amended).

## APPENDIX II

## FORMS OF CHARGES

## PART I

## COMMENCEMENT OF CHARGE-SHEET

(Description of the accused)

(Refer to AR 29)

1. The accused, Number..... Rank..... Name....., Unit....., is charged with :—

2. The accused, Number..... Rank..... Name....., Unit....., an officer holding a permanent (or short service or temporary.....) commission in the regular Army, is charged with:—

3. The accused, Number..... Rank..... Name....., Unit....., attached to.....(unit), is charged with :—

4. The accused, Number..... Rank (Reservist)..... Name..... Unit....., is charged with:—

5. The accused, Number..... Rank..... Name....., Unit....., a person enrolled in the Territorial Army and called out to provide essential guards (or embodied....., or when attached to.....), is charged with:—

6. The accused, Number..... Rank (or appointment or grade)..... Name..... Unit....., a person subject to the Army Act as an Officer (or Junior Commissioned Officer or Warrant Officer or Non Commissioned Officer or a Sepoy) under Section 4(1) thereof read with SRO.....dated....., is charged with :—

7. The accused, Name Shri..... Unit....., a person subject to the Army Act as an Officer (or Junior Commissioned Officer or Warrant Officer or Non Commissioned Officer or Sepoy) under Section 2 (1) (i) read with Section 6 thereof, is charged with:—

8. The accused, Name....., formerly Number....., Rank....., Name..... Unit....., now attached to..... (unit), and liable to trial by court-martial under Section 123 of the Army Act, is charged with:—

## PART II

## ILLUSTRATION OF CHARGE-SHEET

NOTE :—The following is an illustration of a complete charge-sheet, as it would be placed before a District Court Martial for the trial of a Sepoy charged with two offences:—

## Charge-sheet

The accused, No. 12345678 Sepoy (P/A/Naik) Prem Chand, 1st Battalion, The Punjab Regiment, attached to 2nd Battalion, The Dogra Regiment, is charged with :—

First Charge  
Army Act  
Section 41(2)

DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER,  
in that he,

at Allahabad, on 28 Jan 1977, when ordered by JC-23456 Subedar Vijay Chand of 1st Battalion, The Punjab Regiment to turn out for Commanding Officer's parade, did not do so.

Second Charge  
Army Act  
Section 40(c)

USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER,  
in that he,

at the place and date aforesaid, when arrested by JC-23456 Subedar Vijay Chand of 1st Battalion, The Punjab Regiment, said to him, "You know only how to arrest a Sepoy, You are good for nothing", or words to that effect.

NOTE :- The accused will be described by his substantive rank. His acting rank or appointment, if any, may be stated in bracket e.g. Capt (A/Major, Sep (L/NK).

## APPENDIX II—Contd

Place : Allahabad  
Date : 30 Jan 2008

Sd/-  
Veer Pratap  
Lt Col  
Commanding 2nd Battalion  
The Dogra Regiment

† To be tried by a District Court Martial. Dayanand

Sd/-  
Brigadier  
Commanding Allahabad Sub Area

Place : Allahabad  
Date : 1 Feb 2008

†When sanction is accorded for the trial of an offence by a Summary Court Martial vide AA.S. 120(2), a similar endorsement should be made on the charge-sheet.

## NOTES AS TO USE OF FORMS OF CHARGES

These notes do not form part of the Appendices to Army Rules.

(1) Every charge-sheet will begin as shown in the form in Part I of Appendix II (forms of charges), which are given as examples.

The description of an officer, junior commissioned officer, warrant officer or person enrolled under the Act by his number, rank and corps is a sufficient averment that he is an officer, junior commissioned officer, warrant officer or such a person and that he is amenable to military law. In other cases, words must be added to show that the person is amenable to military law (See AR 29). See illustration at Page above.

(2) The commencement of the charge-sheet (according to the form in Part I) will be followed by the charge or charges.

(3) Each charge will consist of two parts; a statement of the offence and a statement of the particulars of the act, neglect or omission constituting the offence. [AR 30(2)].

(4) The statement of the offence will be in one of the forms in Part III of Appendix II.

(5) Where two or more words or expressions occur in Part III of Appendix II bracketed together one under the other, the particular word, or expression, should be used which most accurately describes the offence which appears to the officer framing the charge to be capable of proof by legal evidence.

(6) Where the officer framing the charge is doubtful whether the offence so capable of being proved by legal evidence is more accurately described by one word or expression, or by another, he may frame two or more alternative charges, each charge containing one of the words or expressions which appear to the officer to be applicable to the facts as capable of proof.

(7) Where two or more of the words or expressions bracketed together appear, when coupled together with the word “and”, accurately to describe the offence, the charge may couple together such words or expressions; but in no case must the charge couple with the word “or” two or more of the words or expressions bracketed together [See AR 30(1)]. For example, a person may be charged with making away with arms and ammunition the property of the Government entrusted to him; but a charge for making away with arms or ammunition will be a bad charge.

(8) Where the AA contains a general expression such as “other place”, “other property”, “or otherwise”, the officer framing the charge must not use these terms but specify them by inserting a description of the place, property or means.

(9) The statement of the offence in each charge will be followed by the appropriate statement of the particulars, commencing with the words “in that he”, etc., or ‘in having’, etc., and stating in brief ordinary language what the accused is alleged to have done.

(10) The words “in that he”, will be followed by the verb in the past tense; the words “in having” will be followed by the past participle. The sentence stating the particulars will be framed more easily sometimes in the one form, sometimes in the other.

(11) In the case of several charges, the particulars in one charge may refer to the particulars in another [AR 30(5)], as, for example “in having done the acts alleged in the particulars of the first charge”, or “in that he, at the place and time aforesaid, was deficient of the property abovementioned in the second charge, which was entrusted to him”. If the accused is acquitted on any charge in which full particulars were set out, and is convicted on a charge which referred to those particulars, the particulars referred to must be treated as having been set out in full in the charge on which the accused is convicted, and must be set out in full in any record of conviction in which the particulars are set out.

(12) The “particulars” should always give a general description of the place where the offence was committed, such as the station or town, or “Field” or “the line of march” and if it is material to the charge and is known, the exact place. The prepositions “near” or “between” may be used (for instance “at or near”, “between”) to assist in describing a place not exactly known, but they must never be used where the exact place is of the essence of the offence.

(13) The “particulars” should always state the date on which the offence was committed. If the exact date or time is unknown, the offence may be stated as having been committed “on or about” a particulars day or time. This must never be done where the time is the essence of the offence, as, for example, in the case of absence without leave, or being asleep on a post.

(14) In some cases the offence may be stated more accurately as having been committed between two days or between two times; as for instance, in the case of absence without leave, or of quitting a post. In other cases “between” may be used in consequence of the exact day or exact time not being known.

(15) The words “or near” and “or about” and “between” should never be used unless it is impossible to express the exact place or time, or the exact place or time is clearly unimportant; or unless the word “about” or “between” are the most accurate expression of the place or time.

(16) In many cases, as, for instance, where the defence is an alibi, the time and place may be of the utmost importance in disproving that alibi, although it is not the essence of the offence.

(17) The statement of particulars should specify all the ingredients necessary to constitute the offence : for example if the charge is one for disobeying a lawful command, the “particulars” must state the command, and show that it was given by a superior officer, and also how the accused disobeyed the command.

(18) There must be added at the end of the “Particulars” a statement of any expense, loss or damage in respect of which the court-martial may award stoppages under AA.s.71(i). For example, there may be added to the “Particulars” in the case of a charge under AA.s. 55(b) that the accused thereby damaged ..... property to the value of ..... : and other statement may be made according to the facts.

(19) If, however, the expense, loss or damage was caused by an act, or omission which constitutes another offence, separately specified in the AA, that act or omission should be charged as a separate offence; for example, if a man deserts and is deficient in his kit, he should be charged in a separate charge for losing by neglect clothing, the property of the Government issued to him for his use. It would not be proper to state it as a consequence of the desertion, or to award compensation for it upon a conviction for desertion only.

(20) For offences punishable more severely on active service than at other times, the words ‘while on active service’ must be averred in the particulars of the charge. (*see* AA.ss. 36 and 38).

APPENDIX II—Contd.

PART III

STATEMENT OF OFFENCES

Offences in relation to the enemy and punishable with death

Section 34

(a) Shamefully	{ } abandoning a delivering up a		{ } garrison fortress post place guard	{ } committed to his charge. which it was his duty to defend		
Using means to	{ } compel induce	{ } a commanding officer a person	shamefully to	{ } abandon a deliver up a	{ } garrison fortress post place guard	{ } committed to his charge which it was his duty to defend.
(b) Intentionally using means to	{ } compel induce discourage	{ } a person subject to a person subject to	{ } military naval air force	{ } law	{ } to abstain from acting against the enemy. from acting against the enemy.	
(c) In the presence of the enemy shamefully		{ } casting away his misbehaving in such manner as to show cowardice.	{ } arms. ammunition. tools. equipment.			
(d) Treacherously		{ } holding correspondence with communicating intelligence to	{ } the enemy. a person in arms against the Union. money. arms. ammunition. stores. supplies.			
(e) Directly or Indirectly assisting the enemy with						
(f) Treacherously Through cowardice		{ } sending a flag of truce to the enemy.				

[Common 2188-20B (PM7)]



- APPENDIX II—Contd.**
- (g) In time of war  
During a military operation
- intentionally occassioning a false alarm in  
spreading reports calculated to create
- action  
camp.  
garrison.  
quarters.  
alarm.  
despondency.
- (h) In time of action leaving his
- Commanding officer  
post  
guard  
picquet  
patrol  
party  
serving with  
aiding  
an enemy not being a prisoner
- without being regularly relieved.  
without leave.  
the enemy
- (i) Having been made a prisoner  
of war, voluntarily
- (j) Knowingly
- harbouring  
protecting
- (k) When a sentry, in time of
- war  
alarm  
military  
naval  
air  
forces co-operating with  
part of  
part of forces co-operating with
- sleeping upon his post  
being intoxicated.  
forces of India.  
military  
naval  
air  
forces of India.
- (l) Knowingly doing an act  
calculated to imperil the  
success of the

*Offences in relation to the enemy and not punishable with death*

**Section 35**

- (a) Being taken prisoner
- by want of due precaution.  
through disobedience of orders.  
through wilful neglect of duty
- Having been taken prisoner failing to rejoin his service when able to do so.
- (b) Without due authority
- holding correspondence with  
communicating intelligence to  
correspondence with  
communication of intelligence to
- the enemy
- wilfully omitting to discover it  
immediately to his
- commanding officer.  
superior officer.
- (c) Without due authority sending a flag of truce to the enemy.

[Common 2188-20B (PM7)]

**APPENDIX II—Contd.***Offences punishable more severely on active service than at other times.***Section 36**

- (a) Forcing a safeguard. } a sentry.  
 Forcing }  
 Using criminal force to }  
 (b) Breaking into a } house } in search of plunder.  
 (other place) }  
 (c) When a sentry } sleeping upon his post.  
 being intoxicated }  
 (d) Leaving his } guard } without orders from his superior officer.  
 } picquet }  
 } patrol }  
 } post }  
 (e) Intentionally }  
 Through neglect } occasioning a false alarm in } a m p  
 } } garrison  
 } } quarters.  
 Spreading reports calculated to create unnecessary } alarm  
 } despondency  
 (f) Making known the } parole }  
 } watchword } to a person not entitled to receive it.  
 } countersign }  
 Knowingly giving a } parole }  
 } watchword } different from what he received  
 } countersign }

**Mutiny  
Section 37**

- (a) Beginning }  
 Inciting }  
 Causing }  
 Conspiring with other persons } a mutiny in the } military  
 to cause } } naval  
 } } air  
 } } forces co-operating with the }  
 } } forces of India.  
 (b) Joining in a mutiny in the } military }  
 } naval }  
 } air }  
 } forces co-operating with the } military }  
 } } naval }  
 } } airforces of India }
- forces of India  
 military }  
 naval } forces of India.  
 air }  
 } forces of India.

[Common 2188-20B (PM7)]

## APPENDIX II—Contd.

- (c) Being present at a mutiny in the } military } forces of India  
   } naval }  
   } air } forces of India  
   } forces co-operating with } military } forces of India  
   } naval }  
   } air } not using his utmost  
   } } endeavours to suppress  
   } } the same.
- (d) Knowing }  
       Having reason to believe in } the existence of } a mutiny in the } forces of India  
   } an intention to mutiny in the }  
   } a conspiracy to cause a mutiny in the }  
   } military } forces of India  
   } naval }  
   } air } forces co-operating } military } forces of India  
   } with the } naval }  
   } air }  
   } } Superior officer.
- (e) Endeavouring to seduce a person } military }  
       in the } naval }  
   } air } forces of India from his }  
   } } duty }  
   } allegiance } to the Union }

*Desertion and aiding desertion***Section 38**

- (1) Deserting the service.  
       Attempting to desert the services.
- (2) Harboursing a person subject to the Army Act knowing him to be a deserter.
- (3) Being cognizant of } the desertion } of a person subject to the } giving notice forthwith to his own or other superior officer.  
                                   } attempt at desertion } Army Act not } taking forthwith any steps in his power to cause such person to be apprehended.

*Absence without leave***Section 39**

- (a) Absenting himself without leave.
- (b) Without sufficient cause overstaying } leave granted to him.
- (c) Being on leave of absence and } corps } to which he belongs has been ordered on active service, failing without sufficient cause to rejoin without delay.  
       having received information } portion of a corps }  
       from proper authority that the } department }
- (d) Without sufficient cause failing to } parade } appointed for } exercise  
       appear at the time fixed at the } place } duty.
- (e) Quitting } parade } without sufficient cause  
       the line of march } without leave from his superior officer

[Common 2188-20B (PM7)]

## APPENDIX II—Contd.

- (f) When in camp } being found } beyond the limits fixed } by } a general }  
 When in garrison } } in a place prohibited } } a local }  
 When in (elsewhere) } } } (other) } order without } pass.  
 (g) Without leave from his superior officer } written leave from  
 Without due cause } his superior officer.

*Striking or threatening superior officers***Section 40**

- (a) Using criminal force to } his superior officer.  
 Assaulting }  
 (b) Using threatening language to his superior officer.  
 (c) Using insubordinate language to his superior officer.

*Disobedience to superior officer***Section 41**

- (1) Disobeying in such manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer, in the execution of his office.  
 (2) Disobeying a lawful command given by his superior officer.

*Insubordination and obstruction***Section 42**

- (a) When concerned in a } quarrel } refusing to obey }  
 } affray } using criminal force to }  
 } disorder } assaulting } an officer who ordered him into arrest.  
 (b) Using criminal force to } a person, in whose custody he was lawfully placed.  
 Assaulting. }  
 (c) Resisting an escort whose duty it was } to apprehended him  
 } to have him in charge  
 (d) Breaking out of } barracks.  
 } camp.  
 } quarters.  
 (e) Neglecting to obey } general }  
 } local } order.  
 } (other) }

[Common 2188-20B (PM7)]

**APPENDIX II—Contd.**

- (f) When called upon refusing to assist } the provost-marshal } in the execution of his duty.  
 (g) Using criminal force to } a person bringing } provisions } to the force.  
 Assaulting } supplies }

*Fraudulent enrolment***Section 43**

- (a) Without having obtained a regular discharge from his } corps } enrolling himself in } the same } corps.  
 } department } entering } another } department. } forces of India.  
 Without having fulfilled the conditions enabling him to } enrol } a part of the } naval } air } Territorial Army.  
 } enter }
- (b) Being concerned in the enrolment in any part of the } knowing } such person to be so circumstanced that by enrolling, he would commit an offence against the Army Act.  
 Forces of a person, when } having reason to } believe }

*False answers on enrolment***Section 44**

Making at the time of enrolment wilfully false answer to a question set forth in the prescribed form of enrolment, which was put to him by the enrolling officer before whom he appeared for the purpose of being enrolled.

*Unbecoming conduct***Section 45**

Being } an officer } behaving in a manner unbecoming his position and the character expected of him.  
 } a junior commissioned officer }  
 } a warrant officer }

[Common 2188-20B (PM7)]

APPENDIX II—Contd.  
Certain forms of disgraceful conduct

Section 46

- (a) Disgraceful conduct of  
    } a cruel  
    } an indecent  
    } an unnatural  
    } kind.
- (b) Malingering  
    } disease  
    } infirmity  
    } in himself  
    Feigning  
    } delaying his cure  
    } aggravating his  
    } disease  
    } infirmity  
    Producing  
    Intentionally
- (c) Voluntarily causing hurt to  
    } himself  
    } a person  
    } with intent to render  
    } himself  
    } that person  
    } unfit for service.  
    *Ill-treating a subordinate*

Section 47

- Using criminal force to  
Ill-treating  
    } a person subject to  
    } the Army Act being  
    } his subordinate in  
    } rank  
    } position.

Intoxication  
Section 48

Intoxication

Permitting escape of person in custody

Section 49

- (a) When in command of a  
    } guard  
    } picquet  
    } patrol  
    } post  
    } willfully  
    } without reasonable excuse  
    } releasing without proper authority a person committed to his charge.
- (b) Willfully  
    } allowing to escape  
    } a person  
    } committed to his charge.  
    } whom it was his duty to  
    } keep,  
    } guard  
    } refusing to receive  
    } prisoner  
    } person  
    } committed to his charge

[Common 2188-20B (PM7)]



APPENDIX II—Contd.

Irregularity in connection with arrest or confinement

Section 50

- (a) Unnecessarily detaining a person in [redacted] arrest [redacted]  
[redacted] confinement [redacted] without bringing him to trial.  
Unnecessarily failing to bring the case of a person in [redacted] arrest [redacted]  
[redacted] confinement [redacted] before the proper authority for investigation.
- (b) Having committed a person to military custody [redacted] at the time of [redacted] Officer  
failing without reasonable cause to deliver [redacted] committal [redacted] person  
[redacted] as soon as practicable within forty- [redacted] to the [redacted]  
[redacted] eight hours after such committal [redacted]

[redacted] into whose custody the person arrested was committed, an account in writing signed by himself of the offence with which the person so committed was charged.

Escape from custody  
Section 51

When in lawful custody [redacted] escaping.  
[redacted] attempting to escape

Offences in respect of property  
Section 52

- (a) Committing theft of property belonging to [redacted] the Government.  
[redacted] a military [redacted] mess.  
[redacted] a naval [redacted] band.  
[redacted] an air force [redacted] institution.  
[redacted] a person subject to [redacted] military [redacted] law.  
[redacted] naval [redacted]
- (b) Dishonestly [redacted] misappropriating [redacted] the Government.  
[redacted] converting to his [redacted] a military [redacted] mess  
own use [redacted] property belonging to [redacted] a naval [redacted] band  
[redacted] to [redacted] an air force [redacted] institution.  
[redacted] [redacted] a person subject to [redacted] military [redacted] law.  
[redacted] [redacted] [redacted] naval [redacted] air force
- (c) Committing criminal breach of trust in respect [redacted] the Government.  
of property belonging to [redacted] a military [redacted] mess.  
[redacted] a naval [redacted] band.  
[redacted] an air force [redacted] institution.  
[redacted] a person subject to [redacted] military [redacted] law.  
[redacted] [redacted] [redacted] naval [redacted] air force

APPENDIX II—Contd.

(d) Dishonestly receiving the property belonging to	<div><div></div><div>a military a naval an air force</div><div></div><div>a person subject to</div></div>	<div><div></div><div>mess band institution</div><div></div><div>military naval air force</div><div>law</div></div>	<div><div></div><div>knowing having reason to believe</div><div></div><div>knowing having reason to believe</div></div>	<div><div></div><div>that theft had been committed in respect of the same</div><div></div><div>the same to have been dishonestly converted to his own use</div><div></div><div>that criminal breach of trust had been committed in respect of the same.</div></div>	<div><div></div><div>misappropriated</div><div></div><div>by a person sub- ject to the Army Act.</div></div>
(e) Wilfully destroying or injuring	<div><div></div><div>property of the Government entrusted to him.</div></div>				
(f) Such an offence as is mentioned in clause (f) of Section 52 of the Army Act.	<div><div></div><div>with intent to</div><div></div><div>defraud. cause wrongful gain to a person. cause wrongful loss to a person.</div></div>				
<i>Extortion and corruption</i>					
<b>Section 53</b>					
(a) Committing extortion.	<div><div></div><div>money provisions service</div><div></div><div>from a person.</div></div>				
(b) Exacting without proper authority					
<i>Making away with equipment</i>					
<b>Section 54</b>					
(a) Making away with Being concerned in making away with	<div><div></div><div>arms ammunition equipment instruments tools clothing other thing</div><div></div><div>the property of the Government</div><div></div><div>issued to him for his use. entrusted to him.</div></div>				

APPENDIX II—Contd.

- (b) Losing by neglect

arms  
ammunition  
equipment  
instruments  
tools  
clothing  
(other) thing

the property of the Government

issued to him for his use.  
entrusted to him.
- (c) Selling  
Pawning  
Destroying  
Defacing

a medal  
a decoration

granted to him.

Injury to property  
Section 55

- (a) Wilfully  
Without reasonable excuse

destroying  
injuring

arms  
ammunition  
equipment  
instruments  
tools  
clothing  
(other) thing  
property  
belonging to

the property of the  
Government

issued to him for his use.  
entrusted to him.

a military  
a naval  
an air force

mess.  
band.  
institution.

a person  
subject to

military  
naval  
air force

law.

a person  
serving with  
a person  
attached to

the regular Army.

(b) Wilfully  
Without reasonable excuse

committing an act  
causing  
killing

damage to  
destruction of

property of the Government by fire.

(c) Wilfully  
Without reasonable excuse

injuring  
making away with  
illtreating  
losing

an animal entrusted to him.
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## APPENDIX II—Contd.

## False accusations

## Section 56

- (a) Making a false accusation against a person subject to the Army Act } knowing } such accusation to be false  
 (b) In making a complaint } under section 26 of the Army Act } making a statement affecting the character of a person subject to the Army Act } knowing } such statement to be false  
 } under section 27 of the Army Act } knowingly and wilfully suppressing } a material fact

## Falsifying official documents and false declaration

## Section 57

- (a) In a } report return list certificate book } made by him signed by him of the contents of which it was his duty to ascertain the accuracy } knowingly making being privy to the making of } a false statement. a fraudulent statement.  
 (b) In a } (other document) report return list Certificate book } made by him signed by him of the contents of which it was his duty to ascertain the accuracy. } knowingly making being privy to the making of } an omission with intent to defraud.  
 (c) Knowingly and with intent to } (other document) injure a person defraud } suppressing defacing altering making away with } a document which it was his duty to } preserve. produce  
 (d) Where it was his official duty to make a declaration respecting a matter, knowingly making a false declaration. } by a false statement } knew } to be false.  
 (e) Obtaining for himself for a person } a pension an allowance an advantage a privilege } which he } believed } did not believe to be true  
 } by making a false entry } book.  
 } in a } record.  
 } by using a false entry }  
 } in a }  
 } by making a document containing a false statement.  
 } by omitting to make a true entry or a document containing a true statement.

APPENDIX II—Contd.  
*Signing in blank and failure to report*

Section 58

- (a) When signing a document relating to 

pay

arms

ammunition

equipment

clothing

supplies

stores

property of the Government

fraudulently leaving in blank a material part for which his signature is a voucher.
- (b) Refusing to 

make

send

 By culpable neglect omitting to 

make

send

 a report 

a return

 which it was his duty to 

make

send

.

*Offences relating to courts-martial*

Section 59

- (a) When duly 

summoned

ordered to attend

as a witness before

a court-martial

wilfully

without reasonable excuse

making default—

in attending.
- (b) Refusing to 

take an oath legally required by a court-martial to be taken.

make an affirmation legally required by a court martial to be made.
- (c) Refusing to 

produce

devlier

a dcoument in his

power

control

legally required

by a court-martrial

to be

produced

delivered

by him.
- (d) Refusing when a witness to answer a question which he was by law bound to answer. [Being a witness, refusing to answer a question, which he was by law bound to answers] 

using

insulting

threatening

language.
- (e) Contempt of court-martial by 

causing

an interruption

a disturbance

in the proceedings of such court

[Common 2188-20B (PM7)]

APPENDIX II—Contd.  
False evidence

Section 60

Having been duly } sworn } before } a court-martial } making a false } knew } to be false.  
} affirmed } } a court competent } believed }  
} } } under the Army Act } statement which } did not believe }  
} } } to administer an } the } to be true.  
} } } oath or affirmation }

Unlawful detention of pay  
Section 61

Having received the pay of a person } detaining the same }  
subject to the Army Act, unlawfully } refusing to pay the same. }  
} when due.

Offences in relation to aircraft and flying  
Section 62

- (a) Wilfully } damaging } aircraft } belonging to }  
Without reasonable excuse } destroying } } the Government  
} losing } aircraft material }
- (b) An Act } likely to cause } damage to } aircraft } belonging to }  
Neglect } loss of } destruction of } aircraft material } the Government.
- (c) Without lawful authority disposing of } aircraft } belonging to the Government.  
} aircraft material. }
- (d) An Act } in flying } which caused } loss of life } to a person.  
Neglect } in the use of aircraft } which was } bodily injury }  
} in relation to aircraft } likely to }  
} in relation to aircraft material } cause }
- (e) During the state of war } wilfully and without proper } causing } the sequestration by or under } a neutral state of an aircraft belonging to }  
} occasion } } the authority of } the Government.  
} negligently } } the destruction in }

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**APPENDIX II—Contd.**  
*Violation of good order and discipline*

**Section 63**

An Act }  
An omission } prejudicial to good order and military discipline.

*Miscellaneous offences*

**Section 64**

- (a) When in command } at a post } having received a } beaten } a person }  
on the march } complaint that a person } maltreated }  
under his command has } oppressed }  
} disturbed } a fair }  
} committed } a market }  
} a riot } failing to  
} a trespass }
- (b) By defiling a place of worship } intentionally } insulting the religion } of a person.  
Otherwise } wounding the religious feelings. }
- (c) Attempting to commit suicide and in such attempt doing an act towards the commission of the same.
- (d) Being below the rank of Warrant Officer and carrying when off duty } a rifle } without proper } in } camp.  
} a sword } authority } around } cantonment.  
} an offensive weapon } when going to } a town.  
} } when returning from } a bazar.  
} } } a town  
} } } a bazar  
} } } the enrolment of a  
} } } person.  
} } } leave of absence  
} } } promotion } for a person  
} } } an advantage } in the service.  
} } } an indulgence }
- (e) Accepting } for himself } a gratification } motive } for procuring }  
Obtaining } for another } as a } reward }  
Agreeing to } accept } person }  
Attempting } to obtain }
- (f) Committing an offence against the } property } of an inhabitant of } the country in which  
} person } of a resident in } he was serving.

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**APPENDIX II—Contd.***Attempt***Section 65**

Attempting to (specify offence attempted) and in such attempt doing an act towards the commission of the same.

*Abetment of offences that have been committed*

**Section 66**

Abetment of an offence specified in section (specify the section and sub-section) of the Army Act, in consequence of which abetment such offence was committed.

*Abetment of offence punishable with death and not committed*

**Section 67**

Abetment of an offence punishable with death under section 

}	34
}	37
}	38(1)

 of the Army Act, in consequence of which abetment such offence was not committed.

*Abetment of offences punishable with imprisonment and not committed.*

**Section 68**

Abetment of an offence specified in section (specify the section and sub-section) of the Army Act and punishable with imprisonment in consequence of which abetment such offence was not committed.

*Civil Offences***Section 69**

Committing a civil offence, that is to say, (state the offence as described in Indian Penal Code or other law in force in India), contrary to Section . . . . . (specify the section of the Indian Penal Code or other law)

**APPENDIX II—Contd.****PART IV****SPECIMEN CHARGES**

The following specimen charges (which are not, however, prescribed in any Rules) may be found useful. In this part only statements of offences and particulars of the charges have been given. For the commencement of charge-sheet and the description etc. of the accused, see Part I of Appendix II.

**No. 1*****Charge-Sheet*****[Section 34 (a)]****SHAMEFULLY ABANDONING A POST COMMITTED TO HIS CHARGE,**

in that he,

at....., on....., when in charge of Post No.....in Sector  
.....and attacked by the enemy, shamefully abandoned the said  
post, without any attempt to resist the enemy.

**No. 2*****Charge-Sheet*****[Section 34 (b)]****INTENTIONALLY USING MEANS TO INDUCE A PERSON SUBJECT TO MILITARY LAW TO  
ABSTAIN FROM ACTING AGAINST THE ENEMY,**

in that he,

at....., on....., when both he and No....., Rank.....  
Name....., of his Regiment were in forward post under enemy fire said to  
the said ..... (insert the words in vernacular) of which the following  
is an English translation :—

“We are likely to be killed. Think of your wife and children. Let us run away from the post and  
hide in the nullah nearby”.

**No. 3*****Charge-Sheet*****[Section 34 (c)]****IN THE PRESENCE OF THE ENEMY MISBEHAVING IN SUCH MANNER AS TO  
SHOW COWARDICE,**

in that he,

at....., on....., when No..... Sep ..... of ....., one of the sentries  
at the Regimental Quarter Guard, had mortally wounded one Sepoy of the said guard and  
seriously wounded another and was firing his rifle in all directions, showed cowardice by  
abandoning the said Quarter Guard and hiding himself.

**No. 4*****Charge-Sheet*****[Section 34 (h)]****IN TIME OF ACTION LEAVING HIS PICQUET WITHOUT LEAVE,**

in that he,

at....., on....., in time of action between 2000 hrs and 2200 hrs, being on duty at  
picquet....., left the said picquet without leave.

**APPENDIX II—Contd.****No. 5****Charge-Sheet****[Section 35 (b)]****WITHOUT DUE AUTHORITY COMMUNICATING INTELLIGENCE TO THE ENEMY,**

in that he,

at....., on....., without due authority communicated to....., an enemy agent, that the 1st Battalion, The Dogra Regiment was moving to..... on.....

**No. 6****Charge-Sheet****[Section 36 (a)]****FORCING A SENTRY,**

in that he,

at....., on....., after being warned by No.....Rank.....  
Name .....of.....Regiment, a sentry on post No....., not to pass, passed the said sentry.

**No. 7****Charge-Sheet****[Section 36 (b)]****BREAKING INTO A HOUSE IN SEARCH OF PLUNDER,**

in that he,

when on active service, at....., on....., broke into the house of Shri.....of.....in search of plunder.

**No. 8****Charge-Sheet****[Section 36 (c)]****WHEN A SENTRY SLEEPING UPON POST,**

in that he,

when on active service, at....., on....., between 0100 hrs and 0200 hrs, when a sentry at..... post, was asleep.

**No. 9****Charge-Sheet****[Section 36 (d)]****LEAVING HIS POST WITHOUT ORDERS FROM HIS SUPERIOR OFFICER,**

in that he,

at field, between 0400 hrs and 0600 hrs on....., when on sentry duty at..... post, quitted his post without orders from his superior officer.

**No. 10****Charge-Sheet****(Joint Trial)****[Section 37 (a)]****CONSPIRING WITH OTHER PERSONS TO CAUSE A MUTINY IN THE MILITARY FORCES OF INDIA,**

in that they,

at....., on....., agreed together with No.....Rank.....  
Name .....of..... battalion (and certain other persons unknown) to cause a mutiny in ..... Company of the said battalion, to wit, to cause the said Company to refuse to march on the..... to.....to which place the said Company was under orders to march.

**APPENDIX II—Contd.****No. 11****Charge-Sheet****(Joint Trial)****[Section 37 (b)]****JOINING IN A MUTINY IN THE MILITARY FORCES OF INDIA,**

in that they, together,

at....., on....., in company with a number of other sepoys of the.....  
 Company,..... (Unit), in a mutinous spirit marched to the orderly room of the  
 said (unit) with the object of making a combined representation on a matter of supposed  
 grievance to their Commanding Officer and then and there, they with the exception of  
 No. ....Rank.....Name\*.....on.....seeing the said\*.....  
 marched out of the orderly room in custody, insubordinately took off their belts and threw  
 them on the ground.

**No. 12****Charge-Sheet****[Section 37 (c)]**

**BEING PRESENT AT A MUTINY IN THE MILITARY FORCES OF INDIA, NOT  
 USING HIS UTMOST ENDEAVOURS TO SUPPRESS THE SAME,**

in that he,

at....., on....., being present when No. ....Sepoy..... No. ....  
 Sepoy....., and other soldiers of the same Regiment together refused to go on a route  
 march when ordered to do so by the Company Commander, failed to use his utmost endeavours  
 to suppress the said mutiny.

**No. 13****Charge-Sheet****[Section 38 (1)]****DESERTING THE SERVICE,**

in that he,

at....., on....., absented himself from..... Regiment, until apprehended  
 by the civil police at..... on.....

**No. 14****Charge-Sheet****[First Charge, Section 38 (1)]****DESERTING THE SERVICE,**

in that he,

at....., on....., absented himself from the Regiment, until apprehended by the  
 Civil police, at....., on.....

**[Second charge, Section 52(a)]****COMMITTING THEFT IN RESPECT OF PROPERTY BELONGING TO THE GOVERNMENT,**

in that he,

when absenting himself from his Regiment at the place and on the day aforesaid, committed  
 theft by dishonestly taking with him one rifle (give description) value.....  
 and twenty rounds of .303 ball ammunition value....., the property belonging to  
 the Government.

NOTE 1.—As a rule, proof of the date and circumstances in which the period of absence  
 terminated is necessary to enable the court to decide whether the absence constituted  
 desertion or merely absence without leave. Occasionally, however these facts are not material,  
 and proof of them cannot be obtained without inconvenience to the public service and great  
 delay. In such cases they need not be proved, and should, therefore, not be averred in the  
 particulars of the charge. See Charge-Sheet No. 16 below.

NOTE 2.—It is immaterial whether the rifle is the one issued to the accused or to a comrade.  
 See IPC.S. 27 and illustration (d) to IPC. S. 378.

**APPENDIX II—Cont.****No. 15****Charge-Sheet****[Section 38 (1)]****DESERTING THE SERVICE,**

in that he,

at....., on....., when under orders for embarkation for foreign service, absented himself from.....to.....with intent to avoid such embarkation.

**No. 16****Charge-Sheet****[Section 38 (1)]****DESERTING THE SERVICE,**

in that he,

at....., on....., deserted from the Regiment.

NOTE :—This form may be used when the date and circumstances of the termination of the absence are not material facts, and proof of them cannot be obtained without an unreasonable amount of delay or expense. See Note 1 to Charge Sheet No. 14.

**No. 17****Charge-Sheet****[Section 38 (1)]****DESERTING THE SERVICE,**

at....., on....., having been placed under orders for active service and having been granted leave of absence from ..... to....., to proceed to ..... did not rejoin at.....on the expiry of the said leave but absented himself with intent to avoid such active service.

NOTE : —It will often be advisable to frame an alternate charge for without sufficient cause overstaying leave granted to him, See; Charge sheet No. 22 below. With respect to a case in which the accused has been apprehended by the civil police, see note 1 to Charge Sheet No. 14.

**No. 18****Charge-Sheet****[Section 38 (1)]****ATTEMPTING TO DESERT THE SERVICE,**

in that he,

at....., on....., attempted to quit the lines of his Regiment disguised as a woman, with the intention to desert the service.

**No. 19****Charge-Sheet****[Section 38 (2)]**

**HARBOURING A PERSON SUBJECT TO THE ARMY ACT KNOWING  
HIM TO BE A DESERTER**

in that he,

at....., on....., concealed in his house, No. ...., Rank....., Name....., Regiment, whom he knew to be a deserter from the said ..... Regiment.

**No. 20****Charge-Sheet****[Section 38 (3)]**

**BEING COGNIZANT OF THE DESERTION OF A PERSON SUBJECT TO THE ARMY ACT NOT  
GIVING NOTICE FORTHWITH TO HIS SUPERIOR OFFICER,**

in that he,

at....., on....., when cognizant of the desertion of No....., Rank..... Name....., of the same unit did not give notice thereof forthwith to his superior officer.



**APPENDIX II—Contd.****No. 21****Charge-Sheet****[Section 39 (a)]****ABSENTING HIMSELF WITHOUT LEAVE,**

in that he,

at....., absented himself without leave from the unit lines from....., to.....

**No. 22****Charge-Sheet****[Section 39 (b)]****WITHOUT SUFFICIENT CAUSE OVERSTAYING LEAVE GRANTED TO HIM,**

in that he,

at....., on....., having been granted leave of absence from.....to....., to proceed to....., failed without sufficient cause, to rejoin on the expiry of the said leave, until surrendered voluntarily at ..... , on ..... (until apprehended by the civil police at ..... , on ..... ).

**No. 23****Charge-Sheet****[Section 39 (c)]**

**BEING ON LEAVE OF ABSENCE HAVING RECEIVED INFORMATION FROM PROPER AUTHORITY THAT CORPS TO WHICH HE BELONGS HAS BEEN ORDERED ON ACTIVE SERVICE, FAILING WITHOUT SUFFICIENT CAUSE TO REJOIN WITHOUT DELAY,**

in that he,

on ....., while on leave of absence at ....., having received information from ..... that the..... Regiment had been ordered on active service, failed, without sufficient cause, to rejoin the said Regiment without delay.

**No. 24****Charge-Sheet****[Section 39 (d)]****WITHOUT SUFFICIENT CAUSE FAILING TO APPEAR AT THE TIME FIXED, AT****THE PLACE APPOINTED FOR DUTY,**

in that he,

at....., on....., failed without sufficient cause to appear at ..... hrs at....., the place appointed for PT (Commanding Officer's) parade.

**No. 25****Charge-Sheet****[Section 39 (e)]****QUITTING THE LINE OF MARCH WITHOUT LEAVE FROM HIS****SUPERIOR OFFICER,**

in that he,

at....., on....., when on the line of march from..... to ....., fell out without leave from the Officer Commanding his Company.

**No. 26****Charge-Sheet****[Section 40 (a)]****USING CRIMINAL FORCE TO HIS SUPERIOR OFFICER,**

in that he,

at....., on....., struck with a stick on the head of No. .... Rank..... Name....., of the same Regiment.

**APPENDIX II—Contd.****No. 27****Charge-Sheet****[Section 40(a)]****ASSAULTING HIS SUPERIOR OFFICER,**

in that he,

at....., on....., when ordered by No. .... Rank..... Name....., of the same Regiment to report him at..... hrs that day, picked up a stone and threatened to throw it at the said..... .

**No. 28****Charge-Sheet****[Section 40(b)]****USING THREATENING LANGUAGE TO HIS SUPERIOR OFFICER,**

in that he,

at....., on....., when ordered by No. .... Rank..... Name..... , of the same Regiment, to fall in for parade, said to the said....., “who the hell are you to fall me in; I will bash your head”, or words to that effect.

**No. 29****Charge-Sheet****[Section 40 (c)]****USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER,**

in that he,

at....., on....., said to No..... Rank..... Name....., of the same Regiment, “You know only how to get drunk everyday. You are good for nothing”, or words to that effect.

**No. 30****Charge-Sheet****[Section 41 (1)]**

**DISOBEYING IN SUCH MANNER AS TO SHOW A WILFUL DEFIANCE OF AUTHORITY, A  
LAWFUL COMMAND GIVEN PERSONALLY BY HIS SUPERIOR OFFICER IN THE  
EXECUTION OF HIS OFFICE,**

in that he,

at....., on....., when ordered by No. .... Rank..... Name....., the guard commander, to proceed to sentry post, said, “I shall not go, do what you feel like” and did not proceed to the sentry post from the guard room.

**No. 31****Charge-Sheet****[Section 41 (2)]****DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER,**

in that he,

at....., on....., when ordered by No. .... Rank..... Name....., of the same Regiment to eat his food, did not do so.

**No. 32****Charge-Sheet****[Section 41 (2)]****DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER,**

in that he,

at....., on....., when ordered by No. .... Rank..... Name....., of the same Regiment to fall in for PT parade, did not do so.

**APPENDIX II—Contd.****No. 33****Charge-Sheet****[Section 42 (b)]****USING CRIMINAL FORCE TO A PERSON IN WHOSE CUSTODY HE WAS  
LAWFULLY PLACED,**

in that he.,

at....., on....., when placed by No..... Rank..... Name.....,  
 Regiment....., under custody of No..... Rank..... Name\*.....  
 of the same unit, struck with his web belt, on the head, the said\*..... ,

**No. 34****Charge-Sheet****[Section 42 (b)]****USING CRIMINAL FORCE TO A PERSON IN WHOSE CUSTODY HE WAS  
LAWFULLY PLACED**

in that he,

at....., on....., struck on the head of Civil Police Constable No.....  
 Name.....of..... Police Station, in whose custody he was lawfully placed.

**No. 35****Charge-Sheet****[Section 42 (e)]****NEGLECTING TO OBEY REGIMENTAL ORDERS,**

in that he,

at....., on....., bathed in the river..... above camp, contrary to  
 Regimental Daily Order Part I No ..... dated....., which directed all persons  
 to abstain from bathing in that part of the river.

**No. 36****Charge-Sheet****[Section 42 (e)]****NEGLECTING TO OBEY REGIMENTAL ORDERS,**

in that he,

at....., on....., neglected to obey Battalion Daily Order Part I No..... dated.....,  
 by entering Lal Chowk which had been placed out of bounds by the said order.

**No. 37****Charge-Sheet****[Section 42 (f)]****WHEN CALLED UPON, REFUSING TO ASSIST THE PROVOST MARSHAL  
IN THE EXECUTION OF HIS DUTY,**

in that he,

at....., on....., when called upon by No..... Rank..... Name....., Assistant  
 Provost Marshal of HQ..... Corps, to assist him in arresting No..... Rank.....  
 Name.....Regiment, an offender, refused to do so.

**No. 38****Charge-Sheet****(Section 42 (g))****USING CRIMINAL FORCE TO A PERSON BRINGING SUPPLIES TO THE FORCES,**

in that he,

at....., on....., struck on the face Shri ....., a civilian contractor bringing  
 supplies to the forces.

**APPENDIX II—Contd.****No. 39****Charge-Sheet****[Section 43 (a)]**

**WITHOUT HAVING OBTAINED A REGULAR DISCHARGE FROM HIS CORPS, ENROLLING HIMSELF IN ANOTHER CORPS,**

in that he,

at....., on....., without having obtained a regular discharge from the.....  
Regiment, enrolled himself in the.....Regiment.

**No. 40****Charge-Sheet****[Section 44]**

**MAKING AT THE TIME OF ENROLMENT, A WILFULLY FALSE ANSWER TO A QUESTION SET FORTH IN THE PRESCRIBED FORM OF ENROLMENT, WHICH WAS PUT TO HIM BY THE ENROLLING OFFICER BEFORE WHOM HE APPEARED FOR THE PURPOSE OF BEING ENROLLED,**

in that he,

at....., on....., when appeared before IC..... Rank..... Name.....,  
an enrolling officer, for the purpose of being enrolled for service in the.....  
Regiment, to the question put to him, "Have you ever served in the Indian Armed Forces"  
answered, "No", whereas he had served as he well knew in the..... Regiment.

**No. 41****Charge-Sheet****[Section 45]**

**BEING AN OFFICER BEHAVING IN A MANNER UNBECOMING HIS POSITION  
AND THE CHARACTER EXPECTED OF HIM,**

in that he,

at....., on....., in payment of his mess bill No..... dated ....., gave to  
the Mess Secretary cheque dated.....for Rs..... drawn on the SBI.....  
(Branch), which was dishonored when presented, well knowing that he had not sufficient  
funds in the said branch of the Bank to meet the said cheque, and having no reasonable  
grounds for supposing that the said cheque would be honoured when presented.

**No. 42****Charge-Sheet****[Section 46 (a)]**

**DISGRACEFUL CONDUCT OF AN INDECENT KIND,**

in that he,

at....., on....., at about 2330 hrs, with indecent intent, got into bed with No.  
..... Rank..... Name....., of the same Regiment.

**No. 43****Charge-Sheet****[Section 46 (a)]**

**DISGRACEFUL CONDUCT OF AN UNNATURAL KIND,**

in that he,

at....., on....., committed an unnatural offence on the person of No .....  
Rank ..... Name ....., a Sepoy of the same Regiment.

**No. 44****Charge-Sheet****[Section 46 (b)]**

**MALINGERING,**

in that he,

at....., on....., falsely pretended to MR ..... Capt....., Regimental Medical  
Officer, that he was suffering from a sprained ankle.

**APPENDIX II—Contd.****No. 45****Charge-Sheet****[Section 46 (b)]****MALINGERING,**

in that he,

at....., on....., between..... and..... hrs. with the intention of evading his duties as a member of the Quarter Guard counterfeited dumbness.

**No. 46****Charge-Sheet****[Section 46 (b)]****FEIGNING DISEASE IN HIMSELF,**

in that he,

at....., on....., pretended to MR ..... Captain....., Regimental Medical Officer, that he was suffering violent pain in the head and down his back, whereas he was not so suffering.

**No. 47****Charge-Sheet****[Section 46 (b)]****INTENTIONALLY DELAYING HIS CURE,**

in that he,

at....., on....., when under medical treatment for a wound in his leg, removed the bandages from the said wound, with intent thereby to delay his cure and did thereby delayed his cure.

**No. 48****Charge-Sheet****[Section 46 (c)]**

**VOLUNTARILY CAUSING HURT TO A PERSON WITH INTENT TO RENDER  
THAT PERSON UNFIT FOR SERVICE,**

in that he,

at....., on....., at the request of No..... Rank..... Name....., cut off the trigger finger of the said....., with intent to render him unfit for service.

**No. 49****Charge-Sheet****[Section 47]**

**USING CRIMINAL FORCE TO A PERSON SUBJECT TO THE ARMY ACT, BEING  
HIS SUBORDINATE IN RANK,**

in that he,

at....., on....., when drilling a squad of Sepoys, struck No Sepoy....., of the same Regiment on the shoulder with a pacesstick.

**No. 50****Charge-Sheet****[Section 47]**

**ILL-TREATING A PERSON SUBJECT TO THE ARMY ACT, BEING HIS  
SUBORDINATE IN RANK,**

in that he,

at....., on....., ill-treated No..... Rank..... Name....., of the same unit, by making him stand in the sun between 10 a.m. and 4 p.m. and not allowing him to drink water during the said period.

**APPENDIX II—Contd.****No. 51*****Charge-Sheet*****[Section 48]****INTOXICATION,****in that he,**

at....., on....., when on duty (specify duty) was intoxicated.

**No. 52*****Charge-Sheet*****[Section 49 (a)]****WHEN IN COMMAND OF A GUARD, WILFULLY RELEASING WITHOUT PROPER  
AUTHORITY, A PERSON COMMITTED TO HIS CHARGE,****in that he,**at....., on....., when in command of the Quarter Guard of the.....Regiment,  
wilfully released, without proper authority, No..... Rank..... Name.....,  
Regiment, who was confined in the said Quarter Guard and committed to his charge.**No. 53*****Charge-Sheet*****[Section 49 (b)]****WITHOUT REASONABLE EXCUSE, ALLOWING TO ESCAPE A PERSON WHOM  
IT WAS HIS DUTY TO GUARD,****in that he,**at....., on....., when posted as sentry over No. .... Rank.....  
Name....., of.....Regiment, allowed the said.....to escape without  
reasonable excuse.**No. 54*****Charge-Sheet*****[Section 50 (a)]****UNNECESSARILY DETAINING A PERSON IN CONFINEMENT WITHOUT BRINGING HIM TO  
TRIAL,****in that he,**at....., on....., when officiating Commanding Officer.....Regiment,  
unnecessarily detained No..... Rank..... Name....., of the same Regiment in  
confinement from..... to....., without bringing the said.....to trial.**No. 55*****Charge-Sheet*****[Section 51]****WHEN IN LAWFUL CUSTODY ESCAPING,****in that he,**

at....., on....., when under close arrest in the unit quarter guard, escaped therefrom.

**No. 56*****Charge-Sheet*****[Section 52 (a)]****COMMITTING THEFT OF PROPERTY BELONGING TO THE GOVERNMENT,****in that he,**at....., on....., committed theft in respect of one rifle 7.62 SLR Registered  
No. ...., value....., the property of the Government.



**APPENDIX II—Contd.****No. 57****Charge-Sheet****[(Section 52 (a))]****COMMITTING THEFT OF PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,**

in that he,

at....., on....., committed theft in respect of a watch, the property of No.....  
 Rank..... Name....., of the same Regiment.

**No. 58****Charge-Sheet****[Section 52 (b)]****DISHONESTLY MISAPPROPRIATING PROPERTY BELONGING TO THE GOVERNMENT,**

in that he,

at....., between..... and....., dishonestly misappropriated twenty rounds of  
 7.62 SLR ammunition, the property of the Government value....., which had been  
 entrusted to his charge for the target practice of.....Company.

**[Second Charge, Section 63 (Alternative to first charge)]****AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,**

in that he,

at....., on....., through neglect lost twenty rounds of 7.62 SLR ammunition, the  
 property of the Government, value....., which had been entrusted to him for the  
 target practice of.....Company.

**No. 59****Charge-Sheet****[Section 52 (c)]****COMMITTING CRIMINAL BREACH OF TRUST IN RESPECT OF PROPERTY BELONGING TO THE GOVERNMENT,**

in that he,

at....., on....., dishonestly misappropriated a sum of Rs.....the property  
 belonging to the Government, which was entrusted to him as OC 9 Bihar Bn NCC.

**No. 60****Charge-Sheet****[Section 52 (d)]****DISHONESTLY RECEIVING THE PROPERTY BELONGING TO THE GOVERNMENT, KNOWING THAT THEFT HAD BEEN COMMITTED IN RESPECT OF THE SAME BY A PERSON SUBJECT TO MILITARY LAW,**

in that he,

at....., on....., dishonestly received 2 jerricans of 70 MT, the property belonging  
 to the Government, which he knew to have been stolen by No. .... Rank.....  
 Name....., of..... Regiment.

**[Second Charge Section 63 (Alternative to first charge)]****AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE**

in that he,

at....., on....., was in unauthorized possession of 2 jerricans of 70 MT, the pro-  
 perty belonging to the Government.

**No. 61****Charge-Sheet****[Section 52 (e)]****WILFULLY DESTROYING PROPERTY OF THE GOVERNMENT ENTRUSTED TO HIM,**

in that he,

at....., on....., wilfully destroyed by breaking it up, one heliograph, value.....,  
 the property of the Government which had been entrusted to him for his use as a Regimental  
 signaller.

**APPENDIX II—Contd.****No. 62****Charge-Sheet****[Section 52 (f)]**

**SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT,  
WITH INTENT TO DEFRAUD,**

in that he,

at....., on....., with intent to defraud, obtained from....., a shopkeeper, three packets of Gold Flake Cigarettes valued at Rs. ...., by falsely pretending that he was an orderly to Capt....., of ..... Regiment and that he had been sent by the said Capt.....for the said cigarettes.

**No. 63****Charge-Sheet****[ Section 52 (f)]**

**SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT,  
WITH INTENT TO DEFRAUD,**

in that he,

at....., on....., with intent to defraud, forged the name of Captain....., to a post office order for Rupees.....and thereby detained the sum of Rupees.....

**No. 64****Charge-Sheet****[Section 52 (f)]**

**SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY  
ACT, WITH INTENT TO CAUSE WRONGFUL LOSS TO A PERSON,**

in that he,

at....., on....., with intent to cause wrongful loss to No. ....Rank\*:....., Name....., of ..... Regiment, debited the said\*.....in the acquittance roll for Rs..... of ..... Coy..... Regiment, with a deduction of Rs. .... on account of clothing, which deduction he did not credit to the said\*..... clothing account.

**No. 65****Charge-Sheet****[Section 52 (f)]**

**SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT,  
WITH INTENT TO CAUSE WRONGFUL LOSS TO A PERSON,**

in that he,

at....., on....., having received from No. .... Rank..... Name....., of the same Regiment, the sum of Rupees hundred (Rs. 100/-) for the purpose of dispatching a money order, did not dispatch the money order, but with intent to cause wrongful loss to the said\*.....converted Rupees hundred to his own use.

**No. 66****Charge-Sheet****[Section 53 (a)]**

**COMMITTING EXTORTION,**

in that he,

at....., on....., by threatening to make a false report to the Officer Commanding their Coy to the effect that No. .... Rank..... Name\*....., and No. .... Rank ..... Name\*..... have committed an unnatural offence together, extorted Rs. .... from each of the said\*.....persons.

**APPENDIX II—Contd.****No. 67****Charge-Sheet****[Section 53 (b)]****EXTRACTING WITHOUT PROPER AUTHORITY MONEY FROM A PERSON,**

in that he,

at....., on....., exacted without proper authority, Rs..... from No.....  
Rank..... Name....., of the same Regiment.

**No. 68****Charge-Sheet****[Section 54 (a)]****MAKING AWAY WITH CLOTHING, THE PROPERTY OF THE GOVERNMENT  
ISSUED TO HIM FOR HIS USE,**

in that he,

at....., on....., sold his great coat (value Rs.....) property of the Government,  
issued to him for his use to..... for Rupees.....

**No. 69****Charge-Sheet****[Section 54 (b)]****LOSING BY NEGLECT IDENTITY CARD, THE PROPERTY OF THE GOVERNMENT  
ISSUED TO HIM FOR HIS USE,**

in that he,

at....., on....., lost by neglect Identity Card No....., the property of the  
Government, issued to him for his use.

**No. 70****Charge-Sheet****[Section 54 (b)]****LOSING BY NEGLECT IDENTITY CARD, THE PROPERTY OF THE GOVERNMENT  
ISSUED TO HIM FOR HIS USE,**

in that he,

at....., on....., was deficient of Identity Card No....., the property of  
the Government, issued to him for his use.

**Note:**—Ordinarily proof of the date and circumstances of the loss of the property is necessary. Occasionally, proof of them cannot be obtained. In such cases the particulars of the charge should aver that the accused was deficient of the property in question on a specific date.

**No. 71****Charge-Sheet****[Section 55 (a)]****WITHOUT REASONABLE EXCUSE DESTROYING AMMUNITION, THE PROPERTY  
OF THE GOVERNMENT ENTRUSTED TO HIM,**

in that he,

at....., on....., when NCO i/c of the ammunition dump, without reasonable excuse,  
destroyed 100 rounds of 7.62. SLR ammunition, the property of the Government entrusted to  
him.

**No. 72****Charge-Sheet****[Section 56 (a)]****MAKING A FALSE ACCUSATION AGAINST A PERSON SUBJECT TO THE ARMY  
ACT, KNOWING SUCH ACCUSATION TO BE FALSE,**

in that he,

at....., on....., when appearing before Colonel A...B... Commanding the.....  
Regiment to answer for an offence, used language to the following effect, that is to say,  
"Maj C.....the Coy Commander takes no interest in his work and is entirely in the hands  
of the Platoon Commanders who in turn take bribe all round and allow no one without  
a bribe to approach the "Maj Sahib", well knowing the said statement to be false.

**APPENDIX II—Contd.****No. 73****Charge-Sheet****[Section 56 (b)]****IN MAKING A COMPLAINT UNDER SECTION 27 OF THE ARMY ACT, MAKING A STATEMENT AFFECTING THE CHARACTER OF A PERSON SUBJECT TO THE ARMY ACT, KNOWING SUCH STATEMENT TO BE FALSE,**

in that he,

at....., on....., in a complaint under Section 27 of the Army Act addressed to the Central Government, made the following statement, "The CO is indulging in all sort of malpractices in spending the money received by the unit out of the Annual Training Grant," well knowing the said statement to be false.

**No. 74****Charge-Sheet****[Section 57 (a)]****IN A CERTIFICATE SIGNED BY HIM KNOWINGLY MAKING A FALSE STATEMENT,**

in that he,

at....., on....., in a certificate signed by him in the TA/DA claim for his temporary duty from his unit to.....for the duration from..... to....., stated that he was not provided with free messing at the outstation, well knowing the said statement to be false.

**No. 75****Charge-Sheet****[Section 57 (c)]****KNOWINGLY AND WITH INTENT TO DEFRAUD MAKING AWAY WITH A DOCUMENT WHICH IT WAS HIS DUTY TO PRESERVE,**

in that he,

at....., on....., when accounts officer of his unit, knowingly and with intent to defraud, destroyed by burning the cash Book pertaining to the Regimental Accounts of the unit, a document which it was his duty to preserve.

**No. 76****Charge-Sheet****[Section 57 (d)]****WHERE IT WAS HIS OFFICIAL DUTY TO MAKE A DECLARATION RESPECTING A MATTER, KNOWINGLY MAKING A FALSE DECLARATION,**

in that he,

at....., on....., when being the custodian of classified documents of his unit, rendered a quarterly certificate that he checked and found correct all the said documents, well knowing that a secret document ATM No..... had been lost by him.

**No. 77****Charge-Sheet****[Section 57 (e)]****OBTAINING FOR A PERSON A PENSION BY A FALSE STATEMENT WHICH HE KNEW TO BE FALSE,**

in that he,

at....., on....., when examined by Major A B,..... Regiment who was investigating a claim to family pension preferred by Shri C, inhabitant of....., stated that he knew the said Shri C to be the father of late Sep.....,.....Regiment, well knowing such statement to be false and consequent to which, a family pension of Rs..... p.m. was sanctioned to the said Shri C.

**APPENDIX II—Contd.****No. 78****Charge-Sheet****[Section 58 (a)]****WHEN SIGNING A DOCUMENT RELATING TO SUPPLIES, FRAUDULENTLY LEAVING IN BLANK A MATERIAL PART FOR WHICH HIS SIGNATURE IS A VOUCHER,**

in that he,

at....., on....., when Officer Commanding Sub Depot.....and when signing the Receipt of articles supplied by contractor (IAFS-1520) for the month of....., fraudulently left in blank the columns wherein the total quantity of fresh rations received from the contractor were to be shown.

**No. 79****Charge-Sheet****[Section 59 (c)]****REFUSING TO PRODUCE A DOCUMENT IN HIS CONTROL LEGALLY REQUIRED BY A COURT-MARTIAL TO BE PRODUCED BY HIM,**

in that he,

at....., on....., when a witness, refused to produce a letter dated.....in his control, written to him by No. .... Rank..... Name..... Regiment, when legally required by the Summary Court-Martial trying the said.....to be produced by him.

**No. 80****Charge-Sheet****[Section 59 (e)]****CONTEMPT OF COURT MARTIAL BY USING INSULTING LANGUAGE,**

in that he,

at....., on....., when being tried by a General Court Martial said in a loud tone, "It is no use my making any defence; the Court has been told by the Convening Officer to convict me and of course they will", or words to that effect.

**No. 81****Charge-Sheet****[(Section 60)]****HAVING BEEN DULY AFFIRMED BEFORE A COURT MARTIAL, MAKING A FALSE STATEMENT WHICH HE KNEW TO BE FALSE,**

in that he,

at....., on....., when examined as a witness before a District Court - Martial stated on solemn affirmation that Sep..... of .....Regiment, the person charged before the said Court was in his (the witness's) company in the lines at..... between 0200 hrs and 0500 hrs on....., which statement was, as he well knew, false.

**No. 82****Charge-Sheet****[Section 61]****HAVING RECEIVED THE PAY OF A PERSON SUBJECT TO THE ARMY ACT, UNLAWFULLY REFUSING TO PAY THE SAME WHEN DUE,**

in that he,

at....., on....., having received Rs. .... as an advance of pay for month of..... in respect of the No. ....Rank.....Name..... of the same unit, unlawfully refused to pay the same to the said.....

**APPENDIX II—Contd.****No. 83****Charge-Sheet****[Section 62 (d)]****NEGLECT IN FLYING WHICH WAS LIKELY TO CAUSE LOSS OF LIFE OR  
BODILY INJURY TO A PERSON,**

in that he,

at....., on....., while flying aircraft No. ....over village....., negligently flew the same at a dangerously low altitude which was likely to cause loss of life or bodily injury to the inhabitants of the said village.

**No. 84****Charge-Sheet****[Section 63]****AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,**

in that he,

at....., on....., when JCO i/c at the butt, during the repetition of Musketry No. ....by certain Sepoys of the Regiment, improperly caused it to be signalled to the firing point that four fair hits had been made on No.3 target, whereas actually only one fair hit and one ricochet had been made on the said target, as he well knew.

**No. 85****Charge-Sheet****[Section 63]****AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,**

in that he,

at....., on....., improperly wrote and sent to his Commanding Officer IC- ..... Rank..... Name....., an anonymous letter in which he made use of the following words “.....”

**No. 86****Charge-Sheet****[Section 63]****AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,**

in that he,

at....., on....., was improperly in possession of a pair of boots, the property of No..... Rank..... Name..... of the same Regiment.

**No. 87****Charge-Sheet****[Section 63]****AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,**

in that he,

at....., on....., so negligently drove vehicle BA No. .... 3 Ton, the property of the Government, as to cause the said vehicle to be damaged to the amount of Rs. ....

**No. 88****Charge-Sheet****[Section 63]****AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,**

in that he,

at....., on....., while concerned with the care of public money, so negligently performed his duties as to be unable to account for Rs. ...., part of the said money.



**APPENDIX II—Contd.****No. 89****Charge-Sheet****[Section 63]****AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,**

in that he,

at....., between....., and .....when I/C (in charge) of Military Farm, omitted to exercise proper supervision over the stacking and the issue of bhoosa at the said farm and thereby caused a loss to the Government of Rs..... or thereabout.

**No. 90****Charge-Sheet****[Section 63]****AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,**

in that he,

at....., on....., so negligently handled a rifle as to cause it to be discharged and thereby injuring No. .... Rank..... Name....., of the same Regiment.

**No. 91****Charge-Sheet****[Section 63]****AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,**

in that he,

at....., on....., when appearing at part 'D' promotion examination for paper II Tactics, was in improper possession of a USI precis on Tactics.

**No. 92****Charge-Sheet****[Section 64 (b)]****BY DEFILING A PLACE OF WORSHIP, INTENTIONALLY WOUNDING THE RELIGIOUS FEELINGS OF A PERSON,**

in that he,

at....., on....., entered the unit Mandir in a drunken state and spat around, thereby wounding the religious feeling of the unit personnel.

**No. 93****Charge-Sheet****[Section 64 (c)]****ATTEMPTING TO COMMIT SUICIDE AND IN SUCH ATTEMPT, DOING AN ACT TOWARDS THE COMMISSION OF THE SAME,**

in that he,

at....., on....., attempted to commit suicide by drinking a bottle of TIK.-20.

**No. 94****Charge-Sheet****[Section 64 (e)]****OBTAINING FOR HIMSELF A GRATIFICATION AS A REWARD FOR PROCURING LEAVE OF ABSENCE FOR A PERSON IN THE SERVICE,**

in that he,

at....., on....., while performing the duties of CHM of 'A' Coy, obtained for himself Rs. 50 from No..... Rank..... Name..... of his Coy, a gratification as a reward for having procured leave of absence for the said.....from.....to.....

**APPENDIX II—Contd.****No. 95****Charge-Sheet****[Section 64 (e)]****ATTEMPTING TO OBTAIN FOR HIMSELF, A GRATIFICATION AS A MOTIVE  
FOR PROCURING THE ENROLMENT OF A PERSON,**

in that he,

at....., on....., while working as a clerk in the enrolment section of the Branch Recruiting Office, attempted to obtain Rs. 200 a gratification as a motive for procuring the enrolment of Shri A B, by demanding the said sum from the said Shri A B.

**No. 96****Charge-Sheet****[Section 64 (f)]****COMMITTING AN OFFENCE AGAINST THE PROPERTY OF A RESIDENT IN THE  
COUNTRY IN WHICH HE WAS SERVING,**

in that he,

at....., on....., maliciously damaged a motor car belonging to ..... of....., a resident in.....by thrusting a knife into one of the tyres.

**No. 97****Charge-Sheet****[Section 65]****ATTEMPTING TO INCITE A MUTINY IN THE MILITARY FORCES OF INDIA AND IN SUCH  
ATTEMPT DOING AN ACT TOWARDS THE COMMISSION OF THE SAME,**

in that he,

at....., on....., attempted to incite the non-commissioned officers and men of his Squadron to combine together and refuse to eat their rations next day and to demand from IC..... Rank.....Name....., Commanding the said Regiment that No..... Rank.....,Name....., be removed from his employment as .....i/c of ration issue and to this end addressed Dafadar.....and Sowars.....and .....in the following words.....(set out the language used).

**No. 98****Charge-Sheet****[Section 66]****ABETMENT OF AN OFFENCE SPECIFIED IN SECTION 40(a) OF THE ARMY ACT  
IN CONSEQUENCE OF WHICH ABETMENT, SUCH OFFENCE WAS COMMITTED,**

in that he,

at....., on....., abetted by instigating No..... Rank ..... Name..... of the same Regiment to strike Nb Sub..... of the same Regiment, in consequence of which, the said..... struck the said JCO on the head with a stick.

**No. 99****Charge-Sheet****[Section 66]****ABETMENT OF AN OFFENCE SPECIFIED IN SECTION 52(a) OF THE ARMY ACT, IN  
CONSEQUENCE OF WHICH ABETMENT, SUCH OFFENCE WAS COMMITTED.**

in that he,

at....., on....., when sentry over the Magazine Guard between ..... and ..... , by omitting to keep on the alert, intentionally aided No..... Rank..... Name..... of the same Regiment to commit theft of one-box of ammunition, value Rs....., the property of the Government, in consequence of which the said..... committed theft of one box of ammunition.

NOTE.—If there is any doubt as to the assistance being intentional, an alternative charge under AA. S. 63 may be added.

**APPENDIX II—Contd.****No. 100****Charge-Sheet****[Section 67]****ABETMENT OF AN OFFENCE PUNISHABLE WITH DEATH UNDER SECTION 38(1) OF THE ARMY ACT, IN CONSEQUENCE OF WHICH ABETMENT SUCH OFFENCE WAS NOT COMMITTED,**

in that he,

at....., on....., when on active service, instigated No..... Rank.....  
 Name\*....., of the same Regiment to desert the service, which offence was not  
 committed by the said\* .....

**No. 101****Charge-Sheet****[Section 68]****ABETMENT OF AN OFFENCE SPECIFIED IN SECTION 52(a) OF THE ARMY ACT AND PUNISHABLE WITH IMPRISONMENT, IN CONSEQUENCE OF WHICH ABETMENT, SUCH OFFENCE WAS NOT COMMITTED,**

in that he,

at....., on....., instigated No..... Rank..... Name....., who  
 was working as a batman to No..... Rank..... Name\*..... of the same Regiment  
 to commit theft of the Transistor belonging to the said\*....., which offence was not  
 committed by the said Sepoy.

**No. 102****Charge-Sheet****[Section 69]****COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, CAUSING DEATH BY A RASH OR NEGLIGENT ACT NOT AMOUNTING TO CULPABLE HOMICIDE, CONTRARY TO SECTION 304-A OF THE INDIAN PENAL CODE,**

in that he,

at....., on....., by rashly or negligently driving vehicle BA No....., caused the  
 death of Shri....., Son of ....., a civilian.

**No. 103****Charge-Sheet****[Section 69]****COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, MURDER, CONTRARY TO SECTION 302 OF THE INDIAN PENAL CODE,**

in that he,

at....., on....., by intentionally causing the death of No.....  
 Rank..... Name....., of his unit, committed murder.

**No. 104****Charge-Sheet****[Section 69]****COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, VOLUNTARILY HAVING CARNAL INTERCOURSE AGAINST THE ORDER OF NATURE WITH A MAN, CONTRARY TO SECTION 377 OF THE INDIAN PENAL CODE,**

in that he,

at....., on....., voluntarily had carnal intercourse against the order of nature with  
 No..... Rank..... Name....., of his unit.

**No. 105****Charge-Sheet****[Section 69]****COMMITTING A CIVIL OFFENCE THAT IS TO SAY, RIOTING CONTRARY TO SECTION 147 OF THE INDIAN PENAL CODE,**

in that he,

at....., on....., was a member of an unlawful assembly, which in prosecution of  
 the common object of such assembly to use criminal force to the Civil Police, beat the Civil  
 Police with lathis, thereby committing the offence of rioting.

**APPENDIX II—Concl'd.****No. 106****Charge-Sheet****[Section 69]****COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ATTEMPT TO MURDER, CONTRARY TO SECTION 307 OF THE INDIAN PENAL CODE,**

in that he,

at....., on....., fired two shots from a rifle at No..... Rank.....  
 Name\*....., of the same Regiment, with intent to murder him and thereby wounded the  
 said\*.....in the right ear and left thigh.

**No. 107****Charge-Sheet****[Section 69]****COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, VOLUNTARILY CAUSING GRIEVOUS HURT, CONTRARY TO SECTION 325 OF THE INDIAN PENAL CODE,**

in that he,

at....., on....., voluntarily caused grievous hurt to No..... Rank.....  
 Name....., of the same Regiment by fracturing his left arm with an iron rod.

**No. 108****Charge-Sheet****[Section 69]****COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, THEFT, CONTRARY TO SECTION 379 OF THE INDIAN PENAL CODE,**

in that he,

at....., on....., committed theft of a tin of ghee, value Rs....., from the shop  
 of Shri..... in Sadar Bazar, the property of the said Shri.....

**No. 109****Charge-Sheet****[Section 69]****COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, USING CRIMINAL FORCE TO A WOMAN WITH INTENT TO OUTRAGE HER MODESTY, CONTRARY TO SECTION 354 OF THE INDIAN PENAL CODE,**

in, that he,

at....., on....., used criminal force to Smt....., wife of Shri....., by putting  
 his right hand on her thigh, intending thereby to outrage her modesty.

**No. 110****Charge-Sheet****[Indian Reserve Forces Act 1888 (Section 6 (1) (a))]****WHEN REQUIRED IN PURSUANCE OF A RULE UNDER THE INDIAN RESERVE FORCE ACT TO ATTEND AT A PLACE, FAILING WITHOUT REASONABLE EXCUSE,**

in that he,

having in pursuance of the Indian Reserve Forces Rule 5A been required by his  
 Commanding Officer, Commanding..... Regiment to attend at.....  
 on....., for training, failed without reasonable excuse so to attend.

## APPENDIX III

## PART I (A)

IAFD-937 (Revised)

## FORM OF APPLICATION FOR A COURT-MARTIAL

Place.....dated .....20.....

*Application for a Court-Martial*

Sir,

I have the honour to submit.....charge(s).....against No.....  
 Rank..... Name.....of the.....(unit), under my command, and request  
 you to obtain sanction, of ..... that a....., court-martial may be assembled for his  
 trial at..... (place).

The case was investigated by (a) .....

A court of inquiry (b) was held on.....(date).....at..... (Station).

Presiding Officer.....Ranks .....Names and Corps; Members .....

The accused is now at.....(place).

His general character is (c) .....

Enclose the following documents (d) :

1. Tentative Charge-Sheet along with record of hearing of charge proceedings. (in duplicate).
2. Summary of Evidence, original and.....copy/copies.
3. Original exhibits.
4. List of witnesses for the prosecution and defence (with their present station and addresses).
5. List of exhibits.
6. Correspondence.
7. Statement as to character (IAFD-905) and the conduct-sheet of the accused (e).
8. Statement by the accused as to whether or not he desires to have an officer assigned by the convening officer to represent him at the trial [AR 33(7)].

Yours faithfully,

Signature of Officer Commanding

---

(a) Here insert the name of—

(i) Officer who investigated the charges.

(ii) Company, etc., Commander who made preliminary enquiry into the case.

(iii) Officer who took down the Summary of Evidence [AR 39(2) (c)].

(b) To be filled in if there has been a Court of Inquiry respecting any matter connected with the charge(s); otherwise to be struck out [AR 39(2)(c)].

(c) To be filled in by the Commanding Officer personally in accordance with Regs Army para 171.

(d) Any item not applicable to be struck out.

(e) 3, 4, 5, 6, 7 and 8 to be returned to the Officer Commanding the unit of the accused with the notice of trial.

**APPENDIX III—Contd.**  
**MEDICAL OFFICER'S CERTIFICATE**

I certify that No..... Rank..... Name..... of  
 ..... (unit), is fit/unfit to undergo trial by Court-Martial.

Place—

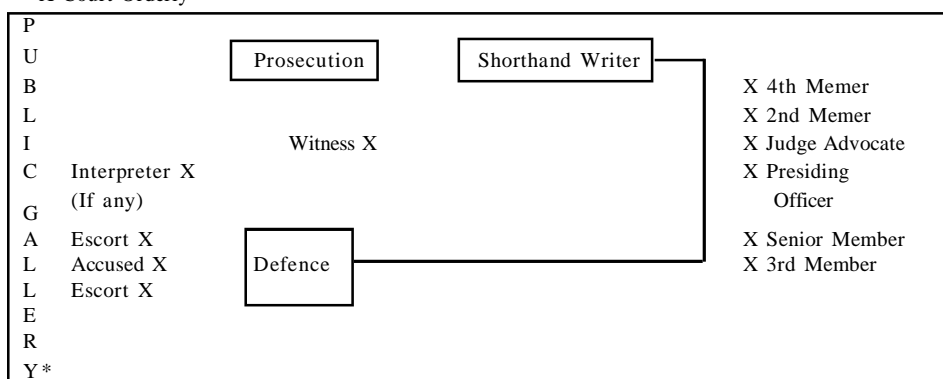
Date—

Signature of the Medical Officer

*Arrangement of the Court Room*

There is nothing stated in the Army Rules but the following seating arrangement has been found convenient in practice :—

X Court Orderly



\* (Subject to provisions of AR 80-A)

**PART I (B)** **IAFD-916**  
**FORMS FOR ASSEMBLY OF COURT MARITAL**

**GENERAL AND DISTRICT**

*Form of order for the Assembly of a General (or District) Court-Martial  
 under the Army Act.*

Orders by.....

Commanding the.....

Place : .....

Dated : .....

The detail of officers as mentioned below will assemble at..... on the ..... day of..... for the purpose of trying by a ..... Court-Martial the accused person (persons) named in the margin (and such other person or persons as may be brought before them)\*\*

The senior officer to sit as Presiding Officer.

**MEMBERS**

**WAITING MEMBERS**

**JUDGE ADVOCATE**

..... is appointed Judge Advocate

**INTERPRETER**

..... is appointed Interpreter

**PROSECUTOR**

..... is appointed Prosecutor

† The accused will be warned, and all witnesses duly required to attend.

NOTE :—The members and waiting members may be mentioned by name, or the number and ranks and the mode of appointment may alone be named.

\*\* Any opinion of the Convening Officer with respect to the composition of the Court (see AR 40) should be added here, thus :

“In the opinion of the convening officer, it is not practicable to appoint officers of different corps or departments” or,

“In the opinion of the convening officer, officers of equal or superior rank to the accused are not, having due regard to the exigencies of the public service, available”.

† Add here any order regarding counsel—see Army Rule 96.



**APPENDIX III—Contd.**

the proceedings (of which only..... @ Copies are required) will be forwarded to this HQ through Dy JAG.....Command.

Signed this.....day of .....20.....

\*\*

[ ]

Rank

Appointment

---

@ The number of copies of the proceedings required is two plus the number of accused persons in case of GCM and one plus the number of accused persons in case of DCM.

\*\*The convening order must be signed by the convening officer personally. The date of the convening order must not be prior to the date on which the order for trial was endorsed by the convening officer on the charge-sheet.

---

**FORM OF DECLARATION FOR SUSPENSION OF RULES UNDER  
ARMY RULE 36**

In my opinion \$ military exigencies, namely (state them) render it @ (impossible) to observe the provisions of rule £ on the trial of ..... by ..... court-martial assembled pursuant to the order of the ..... of

Signed at..... this.....day of.....20.....

Sd/-

(Name)

Rank

Appointment

\$ (the necessities of discipline).

@ (or inexpedient)

£ State the rule or rules which cannot be observed. (see AR 36).

**(Instruction :—***This declaration must be signed by the officer whose opinion is given, and will be annexed to the proceedings. It should not be included in the Convening Order but should be a separate document).***)**

---

IAFD-906

**PART I (C)****% FORMS OF PROCEEDINGS OF COURTS-MARTIAL****‘A’**

*Form of Proceedings of a General (or District) Court-Martial under the Army Act (including some of the incidents which may occur to vary the ordinary course of procedure with instructions for the guidance of the Court).*

Proceedings of a.....Court-Martial, held at .....@ @..... on the ..... day of .....20.....by order of.....Commanding..... dated the.....day of.....20.....

% All printed matter not applicable to the particular Court being held should be struck out and initialled by the officer responsible for the record (AR 92).

@ @ Insert place of assembly

**APPENDIX III—Contd.****PRESIDING OFFICER**

No. .... Rank ..... Name ..... Unit .....

**MEMBERS**

No. .... Rank ..... Name ..... Unit .....

**JUDGE ADVOCATE**

No. .... Rank ..... Name ..... Unit .....

**INTERPRETER**

No. .... Rank ..... Name ..... Unit .....

Trial of\* .....

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

**[Instruction:—***All documents relating to Court, or the matters before it, which are intended to form part of the proceedings (such as an order respecting military exigencies, or a letter answering any question referred to the convening officer) at whatever period of the trial they are received should be read in open court, marked so as to identify them, signed by the Presiding Officer (or Judge Advocate) and attached to the proceedings***].**

The Court satisfy themselves that \$. .... is not available to serve owing to+ ..... £ ..... waiting member, takes his place as a member of the Court.

The court as reconstituted is as follows:—

**PRESIDING OFFICER**

No. .... Rank ..... Name ..... Unit .....

**MEMBERS**

No. .... Rank ..... Name ..... Unit .....

**JUDGE ADVOCATE**

No. .... Rank ..... Name ..... Unit .....

The Court satisfy themselves as provided by Army Rules 41 and 42.

*NOTE.*—Before certifying that the Court have satisfied themselves as provided by Army Rules 41 and 42, the Presiding Officer will, in every case where a Court of Inquiry has been held respecting a matter upon which a charge against the accused is founded, insert an asterisk after the words “Army Rules 41 and 42” and sign a footnote at the bottom of the first page of the proceedings, to the following effect :—

“I have satisfied myself that none of the officers detailed as members of this Court has previously served upon any Court of Inquiry respecting the matters forming the subject of the charge (charges) before this Court-Martial.”

\* Insert Number, Rank, Name, Unit and appointment (if any) of the accused, as mentioned in the convening order.

\$ Insert rank, name and unit  
+Insert reasons.  
£ Insert number, rank, name and unit.

(Signature of Presiding Officer)  
(Name)  
Rank  
Presiding Officer

**APPENDIX III—Contd.**

The accused is brought before the Court.

Prosecutor% .....

Counsel..... @ or Defending Officer ..... @ .....

At..... hrs..... the trial commences.

(Instruction-In terms of para 462 of regs for the army, 1987, the accused is to be examined by a medical officer on morning of each day the court sits, before he is brought before the Court

The order convening the Court is read and is marked.....@@ .....signed by the Presiding Officer (or Judge Advocate) and attached to the proceedings.

The names of the Presiding Officer and Members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q—\*

Question by the Presiding Officer to the accused.

Do you object to be tried by me as Presiding Officer, or by any of the officers whose names you have heard read over ?

**VARIATIONS****CHALLENGING OFFICERS (AR44)**

I object to.....

Do you object to any other officer ?

(This question must be repeated until all the objections are ascertained).

What is your objection to (the junior most officer objected to)?

(Set out)

The accused in support of his objection to.....requests permission to call.....etc., etc.....is called in to court, and is questioned by accused.

(Set out).

The member (objected to) in reply states.

(Set out).

The court is closed to consider the objection in the absence of (the challenged officer).

The court decides to allow/ disallow the objection :

The court is re-opened and the accused is again brought before it. The above decision is announced in the open court.

@Waiting Member.....\*.....takes his place as a member of the Court.

(This only applies in the case of there being a waiting member of the Court).

The Court satisfy themselves that No. .... Rank .....Name.....  
Unit is eligible and not disqualified to serve on this Court-Martial.

%Here state his number, rank, name, unit and legal qualifications if any.

@ Here state name and legal qualifications (see AR [101(2)] in respect of counsel and number, rank, name, unit and legal qualifications in respect of defending officer.

@@ All exhibits to be noted in the margin.

\* All questions and answers will be numbered serially throughout the proceedings.

Q—\* Question by the Presiding Officer to the accused.

A— Answer by the accused.

Q— Question to the accused.

A—Answer by the Accused.

Court closed

Court re-opened

@In case objection is allowed

\*Insert number, rank, name and unit.

Do you object to be tried by.....(the waiting member)?

(Set-out).

(If he objects, the objection will be dealt with in the same manner as the former objection).

What is your objection to.....(the junior of the officers objected to)?

(This objection will be dealt with in the same manner as the former objection).

The Court adjourns for the purpose of fresh members being appointed.

or

The Court is of the opinion that in the interests of justice and for the good of the service, it is inexpedient to adjourn for the purpose of fresh members being appointed, because (here state the reasons).

At.....hrs on.....the Court resume its proceedings. An order appointing fresh officer(s) is read, marked....., signed by the Presiding Officer (or Judge Advocate) and attached to the proceedings.

The Court satisfy themselves with respect to such fresh officers as provided by Army Rule 41.

**(Instruction:—** The procedure as to challenging fresh officers and the procedure, if any objection is allowed, will be the same as above).

The Presiding Officer and members of the Court, as constituted after the above proceedings, are as follows :—

#### PRESIDING OFFICER

No.....Rank.....Name.....Unit.....

#### MEMBERS

No. ....Rank.....Name.....Unit.....

@‘B’

The Presiding Officer, Members and Judge Advocate (also any officers under instruction) are duly sworn \*(or affirmed).

@ Fresh page.

\* Strike out if not applicable.

**(Instruction :—**The witnesses, if in Court, other than the Prosecutor, should be ordered out of the Court after the oath ceremony.

\*\*Certificate of commissioned service in terms of para 460(e) of Regs for the Army, 1987, to be rendered by each member and attached to the proceedings)

Do you object to.....as interpreter?

(Set out).

**(Instructions :—**(1) *In case the accused does not object, the interpreter should be sworn/affirmed. In case the accused objects to the appointment of interpreter, the same procedure will be followed as in the case of an objection to a member of the court.*

(2) *A member of the court appointed interpreter must take the interpreter's oath/affirmation in addition to the oath/affirmation administered to him as a member of the Court).*

\$..... is duly sworn (or affirmed) as interpreter.

Do you object to ..... as shorthand writer?

(Set out)

\$ .....is duly sworn (or affirmed) as short hand writer.

Q—  
Question to the accused.

A—  
Answer by the accused.

\$ Strike out if there is no interpreter or shorthand writer, as the case may be.

Q—  
Question to the accused.

A—  
Answer by the accused.

**(Instruction) :**—If he objects, the objection will be disposed of as in the case of an interpreter).

### CHARGE-SHEET\*

The charge-sheet is signed by the Presiding Officer (or Judge Advocate) marked B-2 and annexed to the proceedings as page—

The accused is arraigned upon each charge in the above mentioned charge-sheet\*\*

Are you guilty or not guilty of the (first) charge against you, which you have heard/read?

(Set out)

**(Instructions:—)***(1) When there is more than one charge the foregoing question will be asked after each charge (whether alternative or not) is read, the number of the charge being stated).*

*(2) If the accused pleads guilty to any charge the provisions of AR 52(2) must be complied with, and the fact that they have been complied with must be recorded. Where there are alternative charges and the accused pleads guilty to the less serious charge, the Court will enter after the plea is recorded: "The Court proceeds as though the accused had not pleaded guilty to any charge" AR 54(2) refers.*

### VARIATIONS

#### OBJECTION TO CHARGE (AR 49)

The accused objects to the charge on the ground that (set out).

**(Instruction) :-***Provisions of AR 88 will be followed on all such incidental matters as shown below).*

The Prosecutor answers (Set out).

The accused (or defending officer) replies (Set out).

Advice by the Judge Advocate—The Judge Advocate advises (Set out).

The court is closed to consider its decision.

The court decides to disallow the objection (or the Court decides to allow the objection and agrees to report to the convening authority).

The Court being re-opened the accused is again brought before it and the above decision is announced in the open court.

The Court proceeds with the trial (or adjourns).

#### AMENDMENT TO CHARGE (AR 50)

The Court, being satisfied that the name (or description) of the accused is..... and not as stated in the charge-sheet, amend the charge-sheet accordingly.

The Court, before any witnesses are examined, considers that, in the interest of justice, the following addition to (or omission from or alteration in) the charge is required (set out), and adjourns to report its opinion to the convening authority.

\* If the trial proceeds on more than one charge-sheet, the trial on each charge-sheet from arraignment to finding inclusive will be kept separate and distinct.

\*\*In case of joint trial each accused will be arraigned separately on each charge (AR 78 refers).

Q—  
Question to the accused.

A—  
Answer by the accused.

Court closed.

Court re-opened.

**PLEA TO THE JURISDICTION (AR 51)**

The accused pleads to the general jurisdiction of the Court on the ground that  
(Set out).

Do you wish to produce any evidence in support of your plea?

Q—  
Question to  
the accused.  
A—  
Answer by  
the accused.

(Set out).

Witness is examined on oath (or affirmation).

**(Instruction:—**The examination, etc., of the witnesses called by the accused and of any witness called by the prosecutor in reply, will proceed as directed below in the case of witnesses to the facts of the trial. Provisions of AR 88 will be complied with).

The Court is closed to consider its decision.

The Court (a) decides to overrule the plea and to proceed with the trial;

Court closed

or (b) decides to allow the plea and to report to the convening authority and adjourn ;

or (c) is in doubt as to the validity of the plea and decides to refer the matter to the convening authority and adjourn [or make the following special decision (Set out) and decides to proceed with the trial].

The Court is re-opened, the accused is brought before it and the above decision is announced in open court .

Court reopened

The Court proceeds with the trial (or adjourns).

**PLEA IN BAR OF TRIAL (AR 53)**

Accused, besides the plea of guilty (or, not guilty) offers a plea in bar of trial on the ground that (set out).

Do you wish to produce evidence in support of your plea?

Q—  
Question to  
the accused.  
A—  
Answer by  
the accused.

(Set out).

**(Instruction:—**The examination, etc., of the witnesses called by the accused, and of any witness called by the prosecutor in reply, will proceed as directed below in the case of witnesses to the facts at the trial. Provisions of AR 88 will be complied with) :

The court is closed to consider its decision.

Court closed

The Court decides to allow the plea and resolve to adjourn [or to proceed with the trial on another charge) (or the Court decides “to overrule the plea].

The court is re-opened, the accused is brought before it and the above decision is announced in the open Court as being subject to confirmation.

Court re-  
opened

The Court adjourns (or proceeds with the trial on another charge) (or proceeds with the trial).

**REFUSAL TO PLEAD [AR 52(1)]**

As the accused does not plead intelligibly (or refuses to plead) to the above charge, the Court enters a plea of “Not guilty”.

---

The accused having pleaded guilty to the ..... charge the provisions of AR 52 (2) and 2(A) are hereby complied with (Reproduce certificate)

---



APPENDIX III—Contd.

@CC

@ Fresh Page.

PROCEEDINGS ON PLEA OF GUILTY

\*[The Court having been re-opened, the accused is again brought before it, and the charge (charges) to which he has pleaded guilty is (are) read to him again].

\* To be struck out in case no plea of “not guilty” has been proceeded with

The accused No. .... Rank..... Name..... Regiment.....  
is found guilty of the charge (all the charges).

or,

is found guilty of the ..... charge, and is found not guilty of the ..... charge.

*(Instruction:—If the trial proceeds upon any charge to which there is a plea of “not guilty”, the Court will not proceed upon the record of the plea of “guilty” until after the finding on that other charge; and in that case the Court will be re-opened and the charge on which the record is “guilty” must be read to the accused again).*

ANNOUNCEMENT OF FINDING(S)

The finding(s) is/are read in open Court and is/are announced as being subject to confirmation.

Do you wish to make any statement in reference to the charge?

Q—  
Question to  
the accused.

(Set out).

A—  
Answer by  
the accused.

(The accused may in accordance with AR 54(3) make any statement he wishes in reference to the charge].

The Summary of evidence is read (orally translated) marked ..... signed by the Presiding Officer (or Judge Advocate), and attached to the proceedings.

*[Instruction :—If there is no summary of evidence, sufficient evidence to enable the Court to determine the sentence and the confirming officer to know all the circumstances connected with the offence will be taken on a separate sheet in the same manner as on a plea of “not guilty”].*

Do you wish to make any statement in mitigation of punishment?

The accused in mitigation of punishment says [or, if the statement is in writing, hands in a written statement, which is read, marked ..... signed by the Presiding Officer (or Judge Advocate), and attached to the proceedings].

Q—  
Question to  
the accused.

A—  
Answer by  
the accused.

*(Instructions :—If the statement of the accused is not in writing, the material portion should be taken down in the first person, and as nearly as possible in his own words.*

*If counsel or defending officer addresses the Court on behalf of the accused, the material portions of his address should be recorded.*

*In any case any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in mitigation of punishment).*

## APPENDIX III—Contd.

## VARIATIONS

## \$ ALTERATION OF PLEA[(AR 54(5)]

\$To be struck out if not applicable. See AR 54(5)

The Court being satisfied from the statement of the accused (or the summary of evidence or otherwise) that the accused did not understand the effect of the plea of “Guilty” enters in the proceedings; the Court consider that the accused does not understand the effect of his plea of “guilty” on ..... charge(s), after the record and enters a plea of “not guilty” in respect of ..... charge(s).

**(Instruction :—***The Court will then proceed in respect of the charge as on a plea of “not guilty”***).**

\*DD

\* Fresh Page.

## WITNESSES FOR DEFENCE ON PLEA OF GUILTY

(AR 54 (7))

The Court permits the accused to call witnesses to prove his above statement that (set out the statement which is to be proved).

**(Instruction:—***The examination, etc., of witnesses called in pursuance of this permission will proceed in the same manner as on a plea of “not guilty”***).**

Do you wish to call any witnesses as to character?

(Set out).

**(Instruction:—***The examination, etc. of witnesses as to character will proceed as in the case of a witness giving evidence as to the facts of the case***).**

Q—  
Question to  
the accused.  
A—  
Answer by the  
accused.

\*C

\*Fresh page.

## PROCEEDINGS ON PLEA OF NOT GUILTY

(AR 56 (1))

Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with and that you have been prejudiced thereby or on the ground that you have not had sufficient opportunity for preparing your defence?

(Set out).

**(Instruction :—***In case of request for adjournment, the accused’s statement together with the decision of the Court is to be recorded***).**

The prosecutor makes an opening address [or hands in a written address, which is read (orally translated), marked....., signed by the Presiding Officer (or Judge-Advocate) and attached to the proceedings].

The prosecutor proceeds to call witnesses.

.....\*being duly sworn (affirmed) is examined by the prosecutor.

(NOTE.—For form of oath or affirmation, see AR (140).

Cross-examined by the accused (or by counsel, or Defending Officer).

Re-examined by the Prosecutor.

Questioned by the Court.

Q—  
Question to  
the accused.

A—  
Answer by the  
accused.

First witness  
for prosecution.

\*Here insert  
No. Rank,  
Name and appointment, if  
any, or other  
description.

**APPENDIX III-CONTD.**

**[Instructions :—**(1) *The fact that AR 141(2)(3) and (4), as applicable, has been complied with must be recorded at the conclusion of the evidence of each witness as under :—*

*“Provisions of AR 141(2)(3) and (4) are complied with” or “The witness does not wish his evidence to be read over to him. Provisions of AR 141(2) are complied with”.*

*(2) In case the Presiding Officer or Judge-Advocate or a member addresses any question to the witness AR 142(2) should also be complied with and the fact recorded.*

*(3) If the accused or his counsel, or defending officer declines to cross-examine a witness that fact must be recorded).*

**VARIATIONS****POSTPONEMENT OF CROSS-EXAMINATION (AR 135)**

The Court, at the request of the accused, allows the cross-examination of the witness to be postponed.

**OBJECTIONS TO EVIDENCE OR PROCEDURE****(AR 88)**

The accused (or counsel or defending officer or the prosecutor) objects to the following question on the ground that (set out).

The prosecutor (or counsel or defending officer or accused, as the case may be, answers that (set out).

The accused (or counsel or defending officer or the prosecutor) in reply states that (set out).

The Judge advocate advises that (set out)

The Court is closed to consider its decision.

Court closed

The Court decides to over-rule (allow) the objection.

The Court is re-opened, the accused is brought before it and the above decision is announced in open Court:

Court reopened

The Court proceeds with the trial.

**EXPLANATION OR CORRECTION OF EVIDENCE****[AR 141 (2)]**

The witness, on his evidence being read to him, makes the following explanation or correction (set out).

Examined by the prosecutor as to the above explanation or correction.

Examined by (or on behalf of) the accused as to the above explanation or correction, The prosecutor and accused (or counsel or defending officer) declines to examine him respecting the above explanation or correction.

Second witness for prosecution.

---

.....being duly, sworn (affirmed) is examined by the prosecutor.

(The examination, etc., of this and every other witness proceeds as in the case of the first witness).

---

**APPENDIX III—Contd.****VARIATIONS****ADJOURNMENT**

At.....hrs on.....the Court adjourn until..... hrs on .....  
20.....

At.....hrs on.....20.....the Court re-assemble, pursuant to the adjournment; present the same members and the Judge Advocate as on .....20.....

**[Instructions :—(1) If upon re-assembly a member is absent and his absence will reduce the Court below the legal minimum and, it appears to the members present that the absent member cannot attend within a reasonable time, the Presiding Officer or senior member present will thereupon report the case to the convening authority (AR 83).**

**(2) If the Judge Advocate is absent, and cannot attend within a reasonable time, the Court will adjourn and the Presiding Officer will thereupon report the case to the convening authority (AR 104).**

**ABSENCE OF MEMBER**

(No. ....Rank.....Name..... Unit)..... being absent, a medical certificate (or letter, or as the case may be) is produced, read, marked....., and attached to the proceedings.

The Court adjourns until.....

or

There being present..... (not less than the legal minimum) members, the trial is proceeded with.

Examination (Cross-examination) of.....continued.

**\*D@**

The prosecution is closed.

**DEFENCE**

Do you intend to call any witness in your defence?

(Set out)

Is he a witness as to character only?

(Set out)

(Instructions to the Court:—(1) When the answers to the above questions have been recorded the Court will follow the provisions of AR 58 or 59 respecting the order of evidence and addresses which are applicable to the circumstances of the case.

(2) All addresses by prosecutor, accused, counsel, or defending officer whether recorded by the Court or handed in writing (and the written summing up by Judge Advocate) will be attached to the proceedings in the order in which they are made. Written addresses (and summing up) will be read to the Court, marked and signed by the Presiding Officer (or Judge Advocate except summing up)

If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence).

The evidence of the witnesses for the defence (including witnesses as to character) is recorded. Such evidence will be taken after the questions, if any, to the accused have been addressed under AR 58(2)(a) .

@ @ The accused (counsel or defending officer) makes an opening address, or (hands in a written opening address which is read, marked ....., signed by the Presiding Officer (or Judge Advocate) and attached to the proceedings) or declines to make an opening address.

Have you anything to say in your defence?

The accused in his defence says (see Instruction (1) below) ( or hands in a written address, which is read (orally translated) marked ....., signed by the Presiding Officer (or Judge Advocate) and attached to the proceedings.

(Instructions :— (1) In, the space will be recorded any oral statement or address made by the accused in his defence, (For any additional address which he is entitled to make, see Instructions to the Court above).

(2) If the statement of the accused is not in writing, and is delivered by himself, the material portions should be taken down in the first person and as nearly as possible in his own words.

Any matter which is requested by or on behalf of the accused to be recorded should be recorded and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.

@ Fresh page.

Q—  
Question to  
the accused.  
A—  
Answer by the  
accused.

Q—  
Question to  
the accused.  
A—  
Answer by the  
accused.

@ @ See Army  
Rule 59(a)

## QUESTION TO THE ACCUSED

The Presiding Officer (or Judge Advocate) reads and explains the provisions of AR 58(2)(a) - AR 58. Having ascertained from the accused that he understands the provisions read over to him, the Court (or Judge Advocate) proceeds to ask the following questions:—

(Set out).

## INSTRUCTIONS TO THE COURT

(1) The accused should be questioned only to afford him an opportunity of offering an explanation, if he so desires, where absence of such explanation would affect him adversely.

(2) Questions put to the accused should be such as will enable him to explain any circumstances appearing against him in the evidence, which if unexplained may lead to a conviction.

(3) Question must not be put to the accused in order to supplement the case for the prosecution.

(4) Questions to the accused and the answers both will be recorded verbatim as far as possible.

## @ D2

(The accused calls the following witnesses\*\* as to character).

**[Instruction :—**All evidence given upon oath (affirmation) will be recorded in the following form).

\*..... being duly sworn (or affirmed) is examined by the accused (or counsel, or defending officer).

Cross-examined by the Prosecutor.

Re-examined.

Questioned by the Court.

**[Instructions:—**(1) *The fact that AR 141(2), (3), (4) as applicable, has been complied with must be recorded at the conclusion of the evidence of each witness.*

(2) *If the prosecutor declines to cross-examine that fact must be recorded.*

(3) *Evidence of witnesses as to character will be taken in the same manner as that of witnesses to the facts.*

(4) *In case the Presiding Officer or the Judge Advocate or a member addresses any question to the witness AR 142(2) should also be complied with and the fact recorded.]*

@ Fresh page.  
First witness  
for defence

\*\*If witnesses  
are called ex-  
cepting as to  
character,  
these words  
are to be  
struck out.

\*Here insert  
his No, Rank,  
Name, Unit  
and appoint-  
ment (if any)  
or any other  
description.

**APPENDIX III—Contd.****RECALLING WITNESS (AR 143)**

(1) At the request of the prosecutor (or the accused)..... is recalled and examined on his former oath/affirmation through the Presiding Officer (or Judge Advocate) and states as follows—

(Set out).

**or**

(2) The prosecutor with leave of the Court calls (or recalls).....for the purpose of rebutting material statement made by a witness for the defence. The witness being duly sworn (or affirmed) is (or is reminded of his former oath/affirmation) examined by the prosecutor and states as follows—

(Set out any cross-examination; re-examination, etc.).

**or**

(3) The prosecutor calls (or recalls) ..... in reply to the witness(es) as to character called by the accused. The witness being duly sworn (or affirmed) is (or is reminded of his former oath/affirmation) examined by the prosecutor and states as follows—

(set out with any cross-examination, re-examination etc.);

**or**

(4) The Court in accordance with AR 143(4) calls (or recalls).....who being duly sworn (or affirmed) (or is reminded of on his former oath/affirmation) states in reply to the Presiding Officer (or Judge Advocate) as follows—

(Set Out)

**[Instructions :—***In (1), (2), and (3) witnesses must be called or recalled before the closing address of or on behalf of the accused. In (4) witnesses may be called or recalled by the Court at any time before the finding; in this case the accused or counsel or defending officer and the prosecutor should be given the opportunity of asking further questions through the Court].*

**ADJOURNMENT TO PREPARE ADDRESSES ETC.**

The Court at the request of the prosecutor (counsel) adjourn until ..... to enable him to prepare his address.

The Court at the request of the accused (counsel or defending officer) adjourn until ..... to enable him to prepare his reply.

The Court at the request of Judge Advocate adjourn until ..... to enable him to prepare his summing up.

The accused (counsel ) makes the following closing address (or hands in a written closing address) which is read (orally translated) marked..... signed by the Presiding Officer (or Judge Advocate) and attached to the proceedings.

**or**

The accused (counsel or defending officer) declines to make a closing address.

The prosecutor makes the following reply (or hands in a written reply) which is read (orally translated) marked.....signed by the Presiding Officer (or Judge Advocate) and attached to the proceedings.

**or**

The prosecutor declines to reply.

**Summing-up**

The judge Advocate hands in a written Summing-Up which is read (orally translated) marked....., signed by the Presiding Officer and attached to the proceedings.

**(Instructions :—***(1) The occasion when the prosecutor's closing address must precede that of the accused (counsel or defending officer) is given in AR 58 (2).*

*(2) Where the address of the prosecutor (or counsel or defending officer) is not in writing, the Court should record as much as appears to it material, and so much as the prosecutor (counsel or the defending officer) requires to be recorded.*

*Care must be taken, whether request is made or not, to record every point brought forward in the defence or in mitigation of punishment.*

*If the address of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person and as nearly as possible in his own words).*



## APPENDIX III—Contd.

@ Fresh Page.

@ E

## \* FINDING(S)

Court closed

Court-closed.

The Court is closed for the consideration of the finding.

(1) Acquittal on all the charges.

The Court find that the accused (No....., Rank.....Name.....Unit.....)  
is not guilty of the charge (or, of all the charges).

\* To be omitted except in case of a plea of “Not guilty” having been proceeded.

(2) Acquittal on some but not all charges.

is not guilty of the.....charge(s) but guilty of the.....charge(s).

Finding not guilty. (of all charges).

(3) Conviction on all charges.

is guilty of the charge (or all the charges).

(4) Special finding.

(a) is guilty of the.....charge(s) and guilty of the.....charge with the exception of the words (set out) (or, with the exception of the words that (set out).

or

(b) is not guilty of deserting the service but is guilty of absenting himself without leave.

or

(c) is guilty of the charge with the variation that figures and words “Rs. 4200.00 (rupees four thousand two hundred)” shall read as “Rs. 3200.00 (rupees three thousand two hundred)”

**(Instruction :—Any special finding permitted by AR 62(4) will be framed as far as possible in accordance with (a) or (c). Any special finding allowed by AA.s, 139 may be expressed in accordance with (b).**

Brief reasons in support of finding.

**APPENDIX III—Contd.****(5) REFERENCE TO CONFIRMING AUTHORITY****[AR 62(3)]**

The Court find as regards the.....charge that the accused did (set out the facts which the Court find to be proved), but doubt whether the facts proved, show the accused to be guilty or not of the offence charged (or of the offence of which the accused might under the Act legally be found guilty on the charge as laid). It, therefore refers to the confirming authority for an opinion and adjourn.

or

**AR 62(8)**

(NOTE.—This applies only to alternative charges).

The Court find that the accused did (set out—such particulars of the charge as the Court find to be proved), but doubt whether such facts constitute in law the offence stated in the..... charge or in the ..... charges.

It, therefore, refers to the confirming authority for an opinion and adjourn.

(In either case)

The Court re-assemble on the.....day of.....20.....The opinion of the confirming authority is read, marked....., signed by the presiding Officer (or Judge Advocate) and attached to the proceedings.

The Court now find the accused (No. ...., Rank ....., Name..... Unit.....) is (finding to be recorded- in the usual manner).

**(6) INSANITY**

The Court find that the accused (No. ....Rank.....Name..... Unit.....) is of unsound mind and consequently incapable of making his ,defence.

or,

Committed the act (acts) alleged as constituting the offence (offences) specified in the charge (charges) but was by reason of unsoundness of mind incapable of knowing the nature of that act (or those acts) (or but was by reason of unsoundness of mind incapable of knowing that that act was wrong (or those acts were wrong) (or contrary to law).

**ANNOUNCEMENT OF FINDING(S)**

The Court being re-opened, the accused is again brought before it. The finding(s) is/ are read in open Court, and is/are announced as being subject to confirmation. Court re-  
opened

Signed at.....this..... day of..... 20.....

(Signature)

Judge- Advocate

(Signature)

Presiding Officer

(Note: If the finding of the court is guilty on any charge, the proceedings are not required to be signed at this stage)

APPENDIX III—Contd.

@F

PROCEEDINGS ON CONVICTION

(Before sentence)

†No. .... Rank..... Name..... Unit..... is duly sworn (or affirmed).

What record have you to produce in proof of former convictions against the accused and of his character?

I produce a statement (IAFD-905) certified under the hand of the officer having custody of the Regimental (or other official) records.

The statement is read (orally translated), marked ....., signed by the Presiding Officer (or Judge Advocate) and attached to the proceedings.

Is the accused the person named in the statement you have heard read?

(Set out)

Have you compared the contents of the above statement with the Regimental (or other official) records?

(Set out)

Are they true extracts from the Regimental (or other official) records and is statement of entries in the defaulter sheet a fair and true summary of those entries ?

(Set out)

Cross-examined by the accused (or by counsel or defending officer).

Re-examined.

or

The accused declines to cross-examine the witness.

**[Instructions :—(1) ARs 141(2), (3) and (4) and 142(2), as applicable, will be complied with and the fact recorded].**

*(2) Any further question will be put and any evidence produced which the Court requires as to any point respecting the character and service of the accused on which the Court desires, to have information for the purpose of its sentence.*

*(3) At the request of the accused, or by the direction of the Court, the Regimental or other official books, or a certified copy of the material entries therein, must be produced for the purpose of comparison with the statement.*

*The accused is entitled to call the attention of the Court to any entries in the Regimental or other official books, or in the certified copy above-mentioned, and to show that they are inconsistent with the statement.*

*When all the evidence of the above matters has been given the accused may address the Court thereon.*

*(4) If by reason of the nature of the service of the accused, the finding of the Court renders him liable to any exceptional punishment, in addition to that to be awarded by the Court, the prosecutor must call the attention of the Court to the fact and the Court must enquire into the nature and amount of that additional punishment.*

Do you wish to address the Court?

(Set out)

@ Fresh Page  
† Insert No.,  
Rank, Name,  
unit and other  
description in-  
cluding the re-  
ligion of the  
witness.

Q—  
Question to  
the witness.  
A—  
Answer by  
the witness.

Q—  
Question to  
the witness.  
A—  
Answer by  
the witness.  
Q—  
Question to  
the witness.  
A—  
Answer by  
the witness.

Q—  
Question to  
the accused.  
A—  
Answer by the  
accused

**APPENDIX III—Contd.**

@The Court is closed for the consideration of the sentence.

Court closed

@Fresh Page

**SENTENCE**

**(Instruction :—***The provisions of AA.ss. 71 to 75 and 119 must be carefully attended to by the Court in passing sentence).*

The Court sentences the accused No.....Rank.....Name.....  
Unit.....,

Sentence

**(Instruction :—***The sentence is to be marginally noted in every case).*

- (a) to suffer death by being hanged by the neck until he be dead (or to suffer death by being shot to death).

Death

“Certified that the sentence of death was passed with the concurrence of .....(or all members, in the case of SGCM)”.

(NOTE.—A JCO or an enrolled person sentenced to death will not be dismissed).

- (b) to suffer imprisonment for life.

Imprisonment  
for life.

- (c) to suffer rigorous (or simple) imprisonment for.

RI.....

(NOTE.—Sentence of imprisonment, unless for one or more years exactly, should, if for one month or upwards, be recorded in months. Sentence consisting partly of months and partly of days should be recorded in months and days).

- (d) to be cashiered (in case of officers only).

Cashiering

**(Instruction :—***An officer must be sentenced to be cashiered before he is awarded the punishment of death, imprisonment for life or of imprisonment).*

- (e) to be dismissed from the service.

Dismissal.

**(Instruction :—***In case a Warrant Officer and a non-commissioned officer, is awarded imprisonment for life, imprisonment, field punishment or dismissal he is deemed to be reduced to the ranks, however, it is desirable to specify the reduction in the sentence, which should precede such sentence.)*

- (f) In case of warrant officers—  
to be reduced to the ranks.

Reduction

or

to be reduced to (a lower rank).

or

to be reduced to (a lower grade).

or

to be reduced to an inferior class of warrant officer, that is to say.....

or

to be reduced in the list of his rank as if his appointment there to bore date the..... day of.....20..... .

In case of non-commissioned officers :—

to be reduced to the ranks.

or

to be reduced to (a lower rank).

or

to be reduced to (a lower grade)

**APPENDIX III—Contd.**

- (g) (In case of an officer, JCO, WO or an NCO)—  
to take rank and precedence as if his appointment as \* ..... bore date the  
..... day of ..... 20 .....  
or  
to take precedence in the rank of ..... held by him, as if his name had appeared (a  
specified number of places) lower in the (Army list in case of officers and JCOs and list  
of his rank in the case of WOs and NCOs.  
to forfeit ..... service for the purpose of promotion
- (Instructions :—***This applies, only in case of a person whose promotion depends upon length of service and a sentence can be inflicted in respect of all or any part of his service).*
- (h) to forfeit (all or ..... years's or ..... months) past service for the purpose of
- (i) (In case of an officer, JCO, WO and NCO).  
to be severely reprimanded (or reprimanded).
- (j) to forfeit pay and allowances for a period of (not exceeding 3 months for an  
offence committed on active service).
- (k) to forfeit all arrears of pay and allowances and other public money due to him at the  
time of his (cashiering or dismissal).
- (l) to be put under stoppage of pay and allowances until he has made good the sum  
of ..... in respect of or (and) until he has made good the value of the following  
articles, viz :

Forfeiture of seniority of rank.

\*Here insert rank to which the punishment pertains.

Forfeiture of service for promotion.

Forfeitures

Severe Reprimand/Reprimand.

Forfeiture of pay and allowances.

Forfeiture of arrears of pay and allowances and public money. Stoppages.

**RECOMMENDATIONS TO MERCY**

The Court recommend the accused to mercy on the ground that (set out)

**ANNOUNCEMENT OF SENTENCE**

The Court being re-opened, the accused is brought before it. The sentence (and recommendations to mercy) is/are announced in open Court, the sentence is announced as being subject to confirmation.

Court re-opened.

Signed at ..... this ..... day of ..... 20 .....

(Signature)  
Judge Advocate

(Signature)  
Presiding Officer

**@REVISION**

@ Fresh Page

At ..... on the ..... day of ..... at ..... hrs, the Court re-assembles by order of ....., for the purpose of reconsidering its .....

Present the same members and the Judge Advocate as on the ..... 20 .....

**(Instructions :—***If a member is absent and the absence will reduce the Court below the legal minimum, and it appears to the members present that such absent member cannot attend within a reasonable time, the Presiding Officer, or in his absence, the senior member present shall thereupon report the case to the convening authority).*

The order directing the re-assembly of the Court for the revision, and giving reasons of the confirming authority for requiring a revision of the finding (or finding and sentence) (or sentence) is read, marked ..... signed by the Presiding Officer (or Judge Advocate) and attached to the proceedings.

**(Instructions :** (1) *If the confirming authority so orders, additional evidence may be taken on revision.*

(2) *If a new-Judge Advocate has been appointed, he should be sworn (or affirmed) and a record to that effect made before the revision order is read.*

**APPENDIX III—Contd.**

(3) *If the accused (or counsel or defending officer) wishes to address the Court, gist of his address should be taken down or his written address be read, marked and attached to the proceedings as usual [AR 92(4) refers].*

(4) *If the Judge-Advocate wishes to clear any points, he may make an additional summing-up which should be read, marked and attached to the proceedings as usual).*

The Court is closed to reconsider their finding or finding(s) and sentence (or sentences). Court closed.

The Court having attentively considered the observations of the confirming authority and the whole of the proceedings:—

(a) do now revoke their finding and sentence and find the accused (guilty) or (not guilty) of the charge(s) and sentence him to.....

or

(b) do now revoke their sentence and now sentence the accused to.....

or

(c) do now respectfully adhere to their sentence (or finding and sentence) or (finding).

**Instructions :—**(1) *In case the revision pertains to Court's findings on some of the charges only record at (a) above should be made accordingly. If the Court do not adhere to their former finding(s) they must revoke their former finding(s) (and the sentence), and pass a fresh sentence if the revised finding(s) involve(s) a sentence.*

(2) *If the new finding entails a sentence, normal proceedings on conviction should be followed, if necessary and form at (a) above amended accordingly.*

(3) *All the decisions of the Court with respect to the finding and sentence should be announced in open Court as being subject to confirmation and a record made to that effect in normal manner).*

Signed at.....this.....day of.....20.....

(Signature)  
Judge Advocate

(Signature)  
Presiding Officer

**CONFIRMATION**

1. "Confirmed".

\*I direct that the sentence of (rigorous or simple) imprisonment shall be carried out by confinement in military custody (or in civil prison or in military prison).

The accused is recommended Division 'A' (or I), or 'B' (or II), or 'C' (or III) while undergoing sentence in the civil prison. If there are only two divisions of prisoners, the accused is recommended Division 'A' (or I) or 'B' (or II)% .

2. I vary the sentence so that it shall be as follows and confirm the finding and the sentence as so varied.

or

\*such directions to be given in every case where a sentence of imprisonment is awarded and confirmed.

% Such recommendations to be made in every case where a sentence of imprisonment is to be carried out in civil prison.



**APPENDIX III—Contd.**

3. I confirm the finding and sentence of the Court, but mitigate (or remit or commute).

or

4. (Where the confirming authority desires partly to reserve his confirmation).

I confirm the finding(s) of the Court on the .....and..... charges and reserve for confirmation by superior authority the findings, on the..... charges and the sentence;

or

5. I confirm the findings of the Court, but reserve the sentence for confirmation by superior authority;

or

6. I confirm the finding(s) of the Court and the sentence of the Court as to..... and reserve the sentence so far as it relates to..... for confirmation by superior authority;

or

7. (Where the finding is not confirmed). Not confirmed.

or

8. (Where a plea in bar of trial had been under AR 53).

“The finding of the Court that the plea in bar is proved (or not proved) is confirmed (or not confirmed)”.

9. Where the Court finds that the accused is of unsound mind and consequently incapable of making his defence or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law.

“Confirmed (or not confirmed).”

or

10. “I confirm the finding of the Court on the first charge but do not confirm the finding on the second charge.”

I confirm the sentence but mitigate (remit or commute)

Signed at... ..this.....day of ..... 20.....

(Signature of confirming authority),

---

**(Instruction—***Any remark of the confirming authority should be separate and form no part of proceedings***).**

**@PROMULGATION**

@ Fresh page.

Promulgated and extracts taken at.....this.....day of.....20.....

(Signature of Officer-in-Charge of documents)

**[Instructions :—**(1) *Proceedings which are not confirmed must also be promulgated.*

(2) *No extracts are required to be taken in respect of the charge(s) on which the accused is acquitted or on which the finding of ‘guilty’ is not confirmed*].

**APPENDIX III—Contd.**(IAFD-907)  
(Revised)**FORM OF PROCEEDING OF A SUMMARY COURT MARTIAL**

Proceedings of a Summary Court-Martial held at ..... on ..... the .....  
day of ..... 20 ..... by ..... Commanding the ..... for the trial of  
all such accused persons as he may duly have brought before him.

**PRESENT**

.....  
.....

Commanding the .....

Attending the trial

.....  
.....

Friend of the Accused

.....  
.....

Interpreter

.....

The Officers\* and Junior Commissioner Officers assemble at ..... and  
the trial commences at ..... hrs.

\*Strike out if  
in-applicable.

The accused No .....

of the ..... is brought ("called" if a non-commissioned officer) into Court

....., the Court, is duly sworn (affirmed).

..... is duly sworn (affirmed) as Interpreter.

**(Instruction.—***If the CO of the accused (i.e. the Court) acts as interpreter, he must take the interpreter's oath in addition to the oath prescribed for the Court.***).**

All witnesses are directed to withdraw from the Court.

**B\*\***

\*\*Fresh page.

The charge-sheet is read (translated) and explained to the accused, marked "B-2" signed by the Court and attached to the proceedings.

**(Instruction—***The sanction of superior authority for trial by SCM should be entered with the date and signature of that authority, at the foot of the charge-sheet, when such sanction is necessary. See AA.s. 120(2)).*

APPENDIX III—Contd.

ARRAIGNMENT

By the Court—How say you.....are you guilty or not guilty of the..... charge preferred against you?

(Set out)

Are you guilty or not guilty of the .....charge preferred against you?

(Set out)

The accused having pleaded guilty to..... charge(s) the provisions of AR 115(2) are here complied with.(Certificate in terms of AR 115 (2A) be reproduced)

(Signature)

(Signature)

(The Accused)

(The Court)

NOTE—If the accused pleads guilty to any charge the provisions of AR 115 (2) and (2A) must be complied with.

**[Instructions—]**(1) If the accused pleads ‘Guilty’, proceed to Page C, D, E, F and G and scoreout pages; if he ‘pleads’ ‘Not Guilty’, proceed to page D, E, F and G (3) and (4) or (5) and scoreout page C (2); if he pleads ‘Guilty to some charge or charges and ‘Not Guilty’ to other (not alternative), proceed to D, E, F, G, H or I and then to C (3), (4), or (5) and (2)].

2. The questions are to be numbered throughout consecutively in a single series).

C\*

PROCEEDINGS ON PLEA OF GUILTY

\*Fresh Page

The accused (No.....Rank.....Name.....Regiment.....) is found guilty of the charge (all the charges).

or

is found guilty of the .....charge, and is found not guilty of the ...charge.

**(Instruction—]**If the trial proceeds upon any charge to which there is a plea of “not guilty”, the court will not proceed upon the record of the plea of “guilty” until after the finding on those other charges; and in that case the charge on which the record is “guilty” must be read to the accused again (AR 116 (1) refers)).

The summary of evidence is read (translated), explained, marked Exhibit-‘1’ , signed by the Court and attached to the proceedings.

**[Instruction—]**If there is no summary of evidence, sufficient evidence to enable the Court to determine the sentence and to enable the reviewing officer to know all the circumstances connected with the case will be taken in terms of para 3 pertaining to plea of not guilty. AR 116(2) refers].

VARIATION

The Court being satisfied from the statement of the accused (or the summary of evidence, or otherwise) that the accused did not understand the effect of the plea of “guilty” alters the record and enters a plea of ‘not guilty’.

**[Instruction—]**The Court will then proceed in respect of this charge as pertaining to plea of Not guilty.]

\* Do you wish to make any statement in reference to the charge or in mitigation of punishment?

(set out)

\* Do you wish to call any witness as to character?

(set out)

Q—  
Question to the accused.

A—  
Answer by the accused.

Q—  
Question to the accused.

A—  
Answer by the accused.

Q—  
Question to the accused.

A—  
Answer by the accused.

Q—  
Question to the accused.

A—  
Answer by the accused.

**APPENDIX III—Contd.**

**[Instructions—(1) The examination of witnesses as to character will proceed as in paragraph(3).**

(2) Evidence as to character and particulars of service will be taken as in paragraph (6).

**D\***

\*Fresh page.

**PROCEEDINGS ON A PLEA OF NOT GUILTY****PROSECUTION**

(3)\*\*.....being sworn (affirmed) is examined by the Court.

Cross-examined by the accused.

Re-examined by the Court.

**[Instructions—(1) The fact that AR 141, (2), (3) and (4) has been complied with must be recorded at the conclusion of the evidence of each witness.**

(2) If the accused declines to cross-examine a witness, the fact must be recorded].

**VARIATION****POSTPONEMENT OF CROSS-EXAMINATION**

**(AR135)**

The Court, at the request of the accused, allow the cross-examination of the witness to be postponed.

Prosecution  
1st witness.  
\*\*(a) Here insert No Rank, Name and Unit or other description.  
(b) Hindus and Musalmaans be affirmed, sikhs and christians be sworn.

\*Fresh Page

**E\***

**The prosecution is closed.**

Do you intend to call any witness in your defence

**(Set out)**

**DEFENCE**

The accused is called upon for his defence and states:-

( **Instruction—the accused may defer such address until he has called his witnesses.**  
**AR 118)**

Questions (if any) by the court under AR 118.

**Instructions to the court**

1. The accused is to be questioned only to afford him an opportunity of offering an explanation, if he so wishes where absence of such explanation would affect him adversely.

2. Questions put to the accused should be such as will enable him to explain any circumstances appearing against him which if unexplained may lead to a conviction.

3. Questions must not be put to the accused in order to supplement the case for the prosecution.

4. Questions to the accused and his answers both will be recorded verbatim as far as possible.

5. No oath shall be administered to the accused.

**@F**

\*.....being duly sworn (affirmed) is examined by the accused  
by the Court.

Re-examined by the accused.

**[Instructions—The fact that AR 141 (2), (3) and (4) has been complied with must be recorded at the conclusion of the evidence of each witness]**

Q—  
Question to the accused.  
A—  
Answer by the accused.

@Fresh Page  
Defence 1st witness.  
\*(a) Here insert No, Rank, Name, Unit and other descriptions.  
(b) Hindus and Musalmaans be affirmed, sikhs and christians be sworn.

**APPENDIX III—Contd.**

The defence is closed.

**@G**

**REPLY**

\*.....being duly sworn (affirmed) is examined by the Court.

**@H**

**VERDICT OF THE COURT**

Acquittal on all charges

(4) I am of opinion on the evidence before me that the accused No.....of the .....is not guilty of the charge, (or all the charges).

The verdict is read out and the accused released. He is to return to his duty.

Signed at.....this.....day of.....2001

Commanding the .....

Holding the trial .....

The trial closes at.....hrs

**@@I**

**VERDICT OF THE COURT**

Acquittal on some but not on all charges.

(5) I am of opinion on the evidence before me that the accused No.....of the .....is not guilty of the.....charges(s) but is guilty of the .....charges (s).

Conviction on all charges.

I am of opinion on the evidence before me that the accused No.....of the .....is guilty of the charge (all charges)

Special findings (AA.S 139 and AR 121).

I am of opinion on the evidence before me that the accused No.....of the .....is guilty of the.....charges(s) and guilty of the .....charge with the exception of the words (set out) or is not guilty of (deserting the service) but is guilty of (absenting himself without leave)

**PROCEEDINGS BEFORE SENTENCE**

(6) The following minutes by the Court are read and explained.

**(Instructions—***If the Court does not record the accused person's convictions and character of its own knowledge, evidence as to these matters will be taken as in the Form of Proceedings for a GCM or DCM, AR 123 refers).*

It is within my own knowledge, from the records of the .....that the accused has/has not been previously convicted by Court-Martial or criminal Court. (A separate statement giving full particulars of any previous conviction to be annexed when necessary). \*

That the following is a fair and true summary of the entries in his defaulter sheet of punishments awarded otherwise than by a court martial or a criminal court.

Within last 12 months. £Since enrolment.

For..... times .....times.

For..... times .....times.

That he is at present undergoing.....sentence.

That, irrespective of this trial, his general character has been.....@

@Fresh Page  
Reply 1st witness.

\*(a) Here insert No., Rank, Name, and unit and other descriptions.

@Fresh Page

@Fresh Page

\*Strike out if in-applicable.

£The offence during the last 12 months must be included under this heading.

@Character to be assessed in accordance with Regs for the Army 1987, para 171

**APPENDIX III—Contd.**

That his age is.....his service.....and his rank is.....

That he has been in arrest (confinement) during investigation, inquiry or trial relating to the same case for .....days in civil custody and .....days in military custody, making a total of .....days.

That he is in possession of or entitled to the following military decorations and rewards:-

NOTE- Any recognized acts of gallantry or distinguished conduct should also be entered here.

**@J**

**SENTENCE BY THE COURT**

@Fresh Page.

Taking all these matters into consideration, I now sentence the accused No...

Rank.....Name.....of the.....

- (a) \*to suffer rigorous (simple) imprisonment for.....(and I direct that the sentence of rigorous/simple imprisonment shall be carried out by confinement in military custody/civil prison)†.(The accused is recommended for Divison 'A' (or I) or B (or II) or 'C' (or III) while undergoing sentence in the civil prison. If there are only two divisions of prisoners, the accused is recommended Divison 'A' (or I) or 'B' (or II).

R i g o r u s (simple) imprisonment for \*Inapplicable words to be struck out and initialled by the court.

**(Instruction—sentences of imprisonment, unless for one or more years exactly should if for one month or upwards, be recorded in months. Sentence consisting partly of months and partly of days should be recorded in months and days)**

†Inapplicable in case the accused is sentenced to imprisonment in military custody / D i s - missal.

(b) to be dismissed from the service.

(c) (if non-commissioned officer)

(1) to be reduced to the ranks, or

(2) to be reduced to (a lower rank)

Reduction.

**Or**

(3) to take rank and precedence as if his appointment to the rank of..... bore date.....

Forfeiture of seniority.

(4)to forfeit.....service for the purpose of promotion.

**(Instruction—This applies only in the case of a non-commissioned officer whose promotion depends upon length of service)**

(d) To forfeit.....past service for the purpose of.....

(e) To be severely reprimanded (or reprimanded)

(f) (If on active service) to forfeit pay and allowances for a period of.....

(g) To forfeit all arrears of pay and allowances and other public money due to him at the time of his dismissal.

Forfeiture of service for promotion. Forfeiture of service for (pension). Severe reprimand or reprimand. Forfeitures.

(h) To be put under stoppage of pay and allowances until he has made good the sum of .....in respect of .....or (and) until he has made good the value of the following articles, viz.....value....etc.

Forfeitures.

Signed at this.....day of ..... 20.....

Stoppage

Commanding the .....  
holding the trial

The trial closes at.....hrs.

**PROMULGATION**

Promulgated and extracts taken at ..... this.....day of.....20.....

(Signature of Officer-in-charge of document)

(Instruction in terms of ARs 131 and 132

**Remarks by Reviewing Officer (AA s 162)**

\*Strike out in applicable portion



APPENDIX III—Contd.

IAFF-956

FORM FOR ASSEMBLY AND PROCEEDINGS OF A SUMMARY GENERAL COURT MARTIAL

A-ORDER CONVENING COURT

At (place).....this.....day of.....20.....

\*(1) Beginning of form in case falling under clause (a) of AA. Sec 112.

Whereas it appears to me.....an officer empowered in this behalf by an order of the Central Government/Chief of the Army Staff that the person/persons named in the annexed schedule, and being subject to Army Act has/have committed the offence/offences in the said schedule mentioned;

\*(2) Beginning of form in case falling under clause (b) of AA. Sec 112

Whereas it appears to me.....the /an officer.....commanding the forces in the field (or empowered in this behalf by the officer commanding the forces in the field) on active service that the person/persons named in the annexed schedule, and being subject to Army Act has/have committed the offence/offences in said schedule mentioned.

\*(3) Beginning of form in case falling under clause (c) of AA Sec. 112.

Whereas it appears to me...../an officer now in command of....being a detached portion of the Regular Army on active service that the person/persons named in the annexed schedule, and being subject to Army Act has/have committed the offence/offences in said schedule mentioned and whereas I am of opinion that is not practicable with due regard to discipline and the exigencies of the service that the said offence/offences should be tried by general court martial.

\*Only one of three will be used, the remaining which are inapplicable being struck out.

(4) *End of form applicable to all cases.*

I hereby convene summary general court-martial to try the said person/persons and to consist of :- £

(Here enter the special order (if any) under AR 160 and any other order under AA.S. 157).

(Signature of convening officer)

B - CERTIFICATE OF PRESIDING OFFICER AS TO THE PROCEEDINGS

I certify that the above Court assembled on the .....day of.....20..... and duly tried the person/persons named in the said schedule and that the plea, finding and sentence in the case of such/each of such persons were as stated in the third and fourth columns of that schedule.

I further certify that the members of the Court the witnesses and the interpreter were duly sworn or affirmed.

Signed at (place).....this.....day of.....20.....

(Signature of Presiding Officer)

£ The members and waiting members (if any) may be appointed by name, or only their Ranks units may be mentioned. In the latter event the Ranks,

Names etc., of the members of the court, as constituted, will be recorded in the proceedings.

\*Strike out in applicable portion

**APPENDIX III—Contd.****C-CONFIRMATION**

I have dealt with the finding/findings and sentence/sentences in the manner stated in the last column of the said schedule and, subject to what I have there stated I hereby confirm the above finding/findings and sentence/sentences.\*

\* Strike out  
inapplicable  
portion

I direct that the sentence of rigorous (or simple) imprisonment shall be carried out by confinement in military custody (or in civil prison)

The accused is recommended Division 'A' (or I) 'B' (or II) while undergoing sentence in the civil prison. If there are only two divisions of prisoners, the accused is recommended Division 'A' (or I) or 'B' (II)

Signed at (place).....this.....day of.....20.....

(Signature of Confirming Officer)

**D-PROMULGATION**

Promulgated and extracts taken at .....this.....day of...20.....

(Signature of Officer in charge of documents)

APPENDIX III—Contd.

SCHEDULE

DATE.....20.....

Name of alleged offender*	Offence Charged	Plea	Finding (s), and if convicted Sentence†	How dealt with by Confirming Officer
	Signature of Convening Officer		Signature of Presiding Officer	Signature of Confirming Officer

\*If the name of the person charged is unknown, he may be described as unknown, with such additions as will identify him.

†Recommendation to mercy to be inserted in this column.

## APPENDIX III—Contd.

IAFD-905  
Army Rule 64

## PART I

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE  
OF ACCUSED

Number, Rank and Name.....of the .....Regt.

1. The following is a fair and true summary of the entries in the squadron, battery, or company conduct sheet of the accused, exclusive of convictions by a court martial or a criminal court and of summary awards under Sections 83, 84 or 85 of the Army act.

(a) Insert the statement of offence and the relevant section of the Army Act.

Within last 12 months	Since enrolment
For (a).....times	.....times
For.....times	.....times
For.....times	.....times

Number of Instances of gallantry or distinguished conduct.

Or

There are no entries in the conduct sheet of the accused.

2. Irrespective of this trial, the accused's general character\*is.....

3. The present age of the accused according to his record of service enrolment papers is.....

4. The date of his commission/ (enrolment) specified in his record of service enrolment papers is.....and his total service is.....

5. (In the case of an officer/JCO). The accused holds the substantive rank of.. dated..... and Actg/Temp. rank of.....dated.....

6. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of.....years.....

In the rank of.....years.....

In the rank of.....years.....

7. The accused is entitled to reckon.....years service for the purpose of determining his pension/gratuity.

8. The accused is in possession of or entitled to the following military decorations and rewards.

9. The accused has been under arrest/confinement during investigation, inquiry or trial relating to the same case for.....days in civil custody and..... days in military custody, making a total of .....days.

10. The accused is not under sentence at the present time.

or

The accused at the present time is under sentence for.....beginning on the .....day of.....20.....

The accused at the present time is under sentence for.....beginning on the .....day of.....20.....

11. There are no previous convictions against the accused.

Or

The previous convictions of the accused by a court-martial or a criminal court and summary awards under sections 83, 84 and 85 of the Army Act are set out in the Schedule annexed to the statement.

\*The character of JCO/OR will be recorded in terms of Regs for the Army, 1987 Para 171. Character of officers is to be assessed in terms of para 465 A of Regs for the Army, 1987.

APPENDIX III—Contd.  
SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CRIMINAL COURT AND OF SUMMARY AWARDS UNDER SECTIONS 83, 84  
OR 85 OF THE ARMY ACT.

Of accused No. .... Rank. .... Name. .... of. ....

Note:—Verbatim extract from the regimental records stating these convictions must be inserted.

Description of court/authority awarding punishment summarily	Place and date of trial/ summary award	Charges of which convicted	Sentence/ summary award	Minute of confirmation (where convicted by court-martial)	Remarks

I hereby certify that the foregoing schedule of convictions is a true extract from the regimental records in my custody.

Station.....

Date.....20..

.....  
Commanding Officer

## APPENDIX III—Contd.

IAFD-901

## PART II

## FORM FOR USE AT SUMMARY TRIALS OF NCOS AND OTHER RANKS UNDER SECS 80-82 OF THE ARMY ACT 1950

Serial No.....

For week ending.....

.....

Last report submitted on.....  
Name.....Battery, Squadron, Company, etc  
Rank.....

## OFFENCE REPORT

Charges against no.....

Place and date of offence	Offence	Plea	Name of witnesses	Findings	Punishments awarded	Signature, Rank and designation of officer by whom awarded and date of award	Date of entry in conduct sheet	Remarks
1	2	3	4	5	6	7	8	9

Instructions :—

Col. 1. In cases of absence without leave/desertion, the date of offence will be the first day of absence.

Col. 2. The section and sub-section of the A.A. under which the charge is preferred will be inserted above the statement of offence.

Col. 4. An officer cannot deal summarily with a case in which he is the sole prosecution witness.

Col. 5. Must be completed strictly in accordance with the heading.

Col. 7. In cases of absence without leave/desertion, the automatic forfeiture of pay and allowances under P &amp; A Regulations must be entered here.

Note:—A Lance Naik is an NCO for the purpose of Army Act Section 80. Punishments of imprisonment, detention and confinement to lines specified in clause (a) (b) and (c) of this section shall not be awarded to NCO

.....  
Signature of OC unit



**APPENDIX III—Contd.**

IAFD-919A

**PART III****FORMS OF SUMMONS TO WITNESSES***(a) In the case of Summary of Evidence*

To

Whereas a charge of having committed an offence triable by court-martial has been preferred before me, against (No. .... Rank ..... Name ..... Unit .....), and whereas I have directed a summary of the evidence to be taken in writing at ..... (place) on the ..... day of ..... 20 ..... hrs. I do hereby summon and require you (name) ..... to attend as a witness at the said place and hour and to bring with you the documents hereinafter mentioned, namely.....

Whereof you shall fail at your peril

Given under my hand at ..... on the ..... day  
of ..... 20 .....

Commanding Officer of the accused,

(Signature)

IAFD-919B

*(b) In the case of a Court Martial*

To

Whereas a ..... court-martial has been ordered to assemble at ..... on the ..... day of ..... 20 ..... of trial of ..... of the, Regiment, I do hereby summon and require you A ..... (B) ..... to attend, as a witness at the sitting of the said court at ..... (Place) on the ..... day at ..... hrs. .... (and to bring with you the documents herein after mentioned, namely.....) and so to attend from day to day until you shall be duly discharged, whereof you shall fail at your peril.

Given under my hand at ..... on the ..... day of ..... 20 .....

..... (Signature)

Convening Officer (or Judge Advocate or

Presiding Officer of the Court or

Commanding Officer of the accused)

*(c) In the case of a Court of Inquiry*

To

IAFD 919 C

Whereas a Court of Inquiry has been ordered to assemble at ..... on the ..... day of ..... 20 ..... for investigation into ....., I do hereby summon and require you A ..... (B) ..... to attend, as a witness at the sitting of the said court at ..... (Place) on the ..... (day) at ..... hrs. .... and to bring with you the documents herein after mentioned, namely.....) and so to attend from day to day until you shall be duly discharged, whereof you shall fail at your peril.

Given under my hand at ..... on the ..... day of ..... 20 .....

..... (Signature)

Officer Assembling the Court of Inquiry

**APPENDIX III—Contd.****PART IV****FORM OF DELAY REPORT****CONFIDENTIAL**

No. ....

Unit address.....

Date.....

To.....

(Convening Officer)

SUBJECT—(1<sup>ST</sup>) (2<sup>ND</sup>) (3<sup>RD</sup>) (4<sup>TH</sup>) ETC EIGHT-DAY DELAY REPORT

PURSUANT TO AA SEC. 103 AND ARMY RULE 27

1. Army No. .... Rank. .... Name. ....
2. Offence. ....
3. Date of offence. ....
4. Date offence was discovered. ....
5. Date of (open/close) arrest. ....
6. Date of release to open arrest/release. .... without prejudice to re-arrest (If not released, reasons)
7. Summary of evidence recorded on ..... (If not recorded, reasons)
8. Application for trial made on. ....
9. Date due to be tried. ....
10. Reason for delay. ....

(Rank)

Copy to

Officer Commanding.....

Brigade/ Sub area commander (if he is NOT also the convening Officer)

Headquarters.....command in the case of (6) and subsequent reports

DyJAG.....Command

**MEMORANDA FOR THE GUIDANCE OF OFFICERS****CONCERNED WITH COURTS-MARTIAL**

The following memoranda as to courts-martial are intended for the guidance of commanding and convening officers and others with a view to securing uniformity of practice and to avoiding some common mistakes.

These memoranda do not form part of the Appendices to the Army Rules, 1954.

**SUMMARY OF EVIDENCE**

1. The officer detailed to record a summary of evidence should-
  - (a) Make himself acquainted with all the circumstances of the case and the testimony of the witnesses who gave evidence before the CO, and carefully consider whether any additional evidence is relevant and necessary (See AR 23 (1). Intelligent and patient investigation will often result in the discovery of a missing link in the chain of evidence, or corroborating evidence, or of evidence tending to exculpate the accused. It may even save an unnecessary or abortive court-martial.
  - (b) Before taking down the evidence.
    - (i) Consider what offence or offences appear to have been committed.
    - (ii) Consider the essential elements of such offence, of each offence.
    - (iii) Consider what facts and circumstances must be proved in order to establish not only the commission of an offence but also the commission of it by the accused. i.e. what facts are relevant to the issue.

**APPENDIX III—Contd.**

- (iv) Consider what evidence should be adduced in order to prove each material fact; in other words, how it is proposed to prove each of the necessary facts by admissible evidence. He will generally find it convenient to ascertain from each witness roughly what evidence that witness can give before actually taking down the evidence.
- (c) When reducing the evidence of witnesses to writing:-
  - (i) Take down the evidence and arrange it, both in the statements of witnesses and in the summary, as far as possible so that events are set out in chronological order and the court may have a connected story to consider.  
A statement of evidence as to facts should commence by recording the place, date and time (if material), to which the evidence refers.
  - (ii) Ensure that only such evidence as is admissible in law is adduced; particularly eliminate all irrelevant and hearsay statements.
  - (iii) Avoid attempting to tell the story of the crime by recording conversation at which accused was not present.
  - (iv) Ascertain that any document intended to be produced is legally admissible in evidence. Every document intended to be produced to the court must be produced by a witness and described and, where necessary, identified by a witness, who is able to do so. For example, where a document has been acknowledged as correct or signed by an accused, evidence must be given to show that he has acknowledged it or his signature must be identified. [Mark and number documents according to order of production].
  - (v) Arrange for the preparation, production and proof of plans where necessary (see Notes to AR 24)
  - (vi) Record the evidence of witnesses as nearly as possible in their own words and expressions. When evidence is not given in English, it will be interpreted and recorded in English.
  - (vii) If the accused has said to any person or at any time anything by way of explanations or admission of any of the facts in issue, consider the circumstances in which the statement was made and if it is admissible let a witness be called to prove it.
  - (viii) Remember that, when it is proposed to tender evidence of an admission or confession, it is desirable that evidence should first be adduced by the prosecution of the circumstances in which it was made to show that it was voluntary, though under the law the onus lies upon the accused of showing that a confession made by him was not voluntary (See Part I, Chapter V)
  - (ix) With regard to the attendance of witnesses, take advantage where desirable of the provisions of AR 23 (5). Before obtaining written statement of witnesses, the proposed questionnaire should be circulated to the accused to enable him to suggest any questions from his side. The written statements of such witnesses when received must be signed and certified as required by the said rule before being attached to the S of E.
  - (x) Remember that a civilian witness can be compelled to attend the taking of the summary [AA. Ss 135 and 136 and AR 23 (6)].
  - (xi) At the close of the evidence of each witness who is not cross-examined by the accused, make a note that "accused declines to cross-examine" [See AR 23 (2)]
  - (xii) Ensure that the evidence of each witness is signed by the witness [(AR 23 (3))]
  - (xiii) Ensure that the record of any statement made by the accused is prefaced by a note that he was formally "cautioned" [AR 23(3)].
  - (xiv) Enter at the end of the summary of evidence a statement that the requirements of AR 23, (1), (2), (3) and (4) have been complied with, and sign the summary, the place and date should be stated.

**APPENDIX III—Contd.****2. Evidence in special cases-**

- (a) Where the charge is for deficiency of kit, unless IAFD 918 is to be produced in evidence, the fact that the accused has been at some time previously in possession of a complete kit, or of the articles alleged to be deficient, the date and place of discovering any subsequent deficiencies, and that none of the articles have since been recovered, should be included in the summary of evidence. Any articles recovered will be omitted from the charge.
- (b) Where a certified true copy of a record in any Regimental book is to be produced [AA.s. 142(4)] the copy should show clearly that the record purports to have been signed by the CO or by the officer whose duty it was to make the record [AA. S. 142 (3)].
- (c) Where the charge is for neglecting to obey a battalion or similar order, the order should be proved as provided in AA. S. 142(3) or (4) Sec (b) above, but if the order is not included in the "Regimental books" (Regs Army para . 610, as for example a station or a company order or an order for sentries, the original order must be produced.
- (d) Where IAFD-918 is to be produced, it must be signed by the officer having the custody of the books from which it is compiled. The original declaration of the court of inquiry, even if in existence, is not admissible as evidence. Nor is IAFD 918, unless the entry in the court-martial book (of which it is a certified copy) purports to have been signed by the officer in actual command of the accused's corps or department, as required by AA.s. 106.
- (e) A certificate of surrender or apprehension under AA.s 142(6) (IAFD-910) or under AA.s. 142 (5) should only state the fact, date and place of the surrender or apprehension of the absence and the manner in which he was dressed and is only admissible as evidence of those facts and only in cases of desertion or absence without leave. The circumstances of the surrender or apprehension must be proved by a witness. The certificate must be signed by a police officer not below the rank of an officer in charge of a police station. For the surrender/apprehension certificate under AA.s. 142 (5), see regs Army para 378.  
The CO of the deserter or absentee should forward IAFD-910 without unnecessary delay to the officer in charge of the police station for completion and signature.
- (f) Many cases depend on the identification of persons or things. Evidence should be recorded to show that each witness identifies the accused, and any other person or thing mentioned in his evidence whose identity is relevant to the charge; e.g. on a charge for theft, the articles, the subject of the charge, must be produced and identified or their absence satisfactorily accounted for.  
Articles alleged to have been damaged should be produced and identified.
- (g) Where the charge is for any offence which has occasioned any expense, loss damage or destruction for which it is expedient to award stoppages under AA.s. 71(I), values should be assessed and evidence taken as follows:-
  - (i) When an article which has an official value has been lost or rendered unserviceable, a witness is required who can prove the value (inclusive of authorized departmental expenses) of the article at the date of loss upon a basis of its age and/or to condition and by reference to the regulations which should be produced for fixing the value of the article at that age or in that condition.
  - (ii) When the article has no official value, competent evidence is required to prove the approximate value.
  - (iii) When an article has been damaged but not rendered unserviceable, competent evidence is required to prove the pecuniary amount of the damage, which will be either the cost of repairing it, if it can be repaired, or the loss of value caused by the act of the accused, if it cannot be repaired, or the cost of repair plus any ultimate loss of value due to the act of the accused.

**APPENDIX III—Contd.**

- (iv) In the case of absence of desertion, the deficiencies to be alleged in a charge under AA.s. 54 (b) are those ascertained when the soldier rejoins, not necessarily those found on the commencement of the absence, or by a court of inquiry. Evidence should not be taken of the values of personal clothing and necessities the property of a person subject to AA, the value of which has not to be made good to the public.
- (h) where the charge is for misappropriation or losing by neglect money or stores, etc, the evidence should show-
  - (i) The period during which the accused held office and was responsible for certain money or stores, etc.
  - (ii) That at the opening of this period the accounts, money, stores, etc., were correct.
  - (iii) Receipts and expenditure of money, stores, etc. during this period.
  - (iv) That at the close of this period there was a specific deficiency of money, stores, etc.

Items (ii), (iii), (iv) must, as a rule, be proved by the production by a witness of the original account books, and vouchers, and evidence that they were kept or signed by the accused. Witnesses should then give evidence explaining the deficiency, which is checked with the original books, etc and recorded.
- (i) In cases of attempts to commit suicide, medical evidence giving an opinion on the state of mind of the accused at the commission of the alleged offence should be taken.
- (j) In cases of self-maiming the medical witness or witness should be asked whether the injury sustained by the accused will render him unfit for further service.

3. Where the accusation arises out of complaint made by an individual who has not yet identified the person whose conduct is complained of, the complainant, and any other alleged eye-witness in the same circumstances, should have an opportunity of picking out from a group the person against whom they are prepared to give evidence. For this purpose an identification parade should be held in the presence of an officer before the witness(es) give evidence at the summary, or otherwise see the accused in circumstances which may suggest that they are expected to recognize one particular person as the offender. At such parade a witness should not be permitted to see or hear anything which might include him to take a cue from the behaviour of another witness. Regs Army para 406 refers.

4. If in any case two or more persons are suspected of complicity in an offence, and it is found necessary to call one of them as a witness for the prosecution against the other or others charged in connection with the offence, one of two courses must be taken either.

- (a) Proceedings against him must be abandoned and any charge therein already preferred against him dismissed; or
- (b) Steps must be taken to ensure that the case against him is disposed of summarily or tried by court-martial, before the trial of persons concerned against whom he is to give evidence; and that he is, only tendered as a witness when he has already been acquitted or convicted.

In all such cases the circumstances and the course proposed should be fully set out in a covering letter to the convening officer.

**COMMANDING OFFICERS**

5. A CO will take care that an accused person is not detained in custody beyond 48 hours without the charge, being investigated, unless investigation is impracticable, in which case a report will be made to the officer to whom application to convene a GCM or DCM would be made (AA. 102)

**APPENDIX III—Contd.**

6. Before applying for the trial of an offender, a CO should satisfy himself :—
  - (a) That the accused is subject to the AA, and is charged with an offence which is an offence against that Act
  - (b) That the offender is not exempted from trial under the provisions of AAs 122;
  - (c) That the offence is not one which he should dispose of himself summarily or one which he should and can try by SCM (Regs Army para 447) without reference [(AAs 120(2)] or, if it is one of those offences, that from its gravity, or from the previous character of the accused, he ought not to deal with it on account of the inadequacy of his powers of punishment;
  - (d) That the summary of evidence is properly recorded (see paras 1 and 2 ante);
  - (e) that the evidence justifies the trial of the offender on the charge;
  - (f) That the charge is properly framed under the appropriate section (see ARs 28 to 30 and Notes thereto)
  - (g) That an officer has given the accused a copy of the summary of evidence as soon as practicable after he had been remanded for trial and that his rights as to preparing his defence and of being assisted or represented at the trial have been explained to him by that officer [AR 33(7)].
7. When making application for the trial of the offender, the CO should satisfy himself, that the following provisions are complied with:-
  - (a) The application for trial (IAFD-937) must be accompanied by all necessary documents as therein specified; and the medical officer's certificate at the foot completed;
  - (b) The convening officer must be informed whether or not the accused desires to have a defending officer assigned to represent him at the trial;
  - (c) The information required as to officers who have investigated the case; or sat on a court of inquiry, must be given with great care;
  - (d) The charge-sheet must be signed by the officer in actual command of the unit to which the accused belongs or is attached, and should state the place and date of signature;
  - (e) Sufficient space should be left at the foot of the charge-sheet for the orders of the convening officer, or officer sanctioning trial under AAs 120 (2) to be entered. The place and date should be entered by the officer signing such orders;
  - (f) The section of the AA under which each charge is framed should be entered in the margin, opposite the charge to which it refers;
  - (g) When it is intended to prove any facts in respect of which any deduction from the pay and allowances (i.e. stoppages) of the accused can be awarded in consequence of the offence charged, those facts must be clearly shown in the particulars of the charge and sum of the loss or damage it is intended to charge [see para 2(g) above]
  - (h) IAFD-905 by whomsoever produced, is to be signed by the officer having custody of the books from which it is compiled; custody includes temporary custody for the purpose of the trial. In preparing this form, minor offences may be grouped as "miscellaneous". Offences of the same class as that being charged should be shown in a separate group.
8. After trial has been ordered the CO should satisfy himself that the following provisions are complied with :-
  - (a) The accused must be warned for trial not less than 96 hours (24 hours where he is on active service) before the court assembles, must be informed by an officer of every charge on which he is to be tried, must be given a copy of the charge-sheet and a vernacular translation of the same and of the summary of evidence, and notice of the intention to call witnesses whose evidence is not contained in the summary and an abstract of their evidence, and must be informed of the ranks, names and units of the officers who are to form the court as well as of any waiting members (AR 34)



**APPENDIX III—Contd.**

- (b) The accused must be informed that on his giving the names of any witnesses for the defence, reasonable steps will be taken to procure their attendance;
- (c) The accused must be afforded proper opportunity for preparing his defence.
- (d) The CO must not detail as a member of the court an officer who is ineligible or disqualified to serve under the provisions of AR 39;
- (e) The accused must be seen by a medical officer on the morning of each day the court is sitting for his trial and the medical officer's report should be produced by the prosecutor to the court immediately after it opens;
- (f) In a case of a joint trial, the accused persons should be informed of the intention to try them together and of their right under AR 35(4) to claim separate trials if the nature of the charge admits of it.

9. After confirmation (or refusal thereof), the CO must see that the following provisions are complied with:-

- (a) The proceedings must be promulgated as laid down in Regs for the Army para 472;
- (b) The record of the promulgation must be entered in the proceedings in form shown on page 291 and, if the proceedings have been confirmed, extracts recorded in the Regimental books;
- (c) After promulgation the proceedings must be forwarded without delay to DyJAG of the command direct. Regs Army para 477 refers.

**CONVENING OFFICER**

10. The convening officer should satisfy himself as regards the matters mentioned in para 6 and 7 (above); and in addition he will ensure:-

- (a) in all cases for trial by GCM, and in all cases of indecency, fraud, theft (except ordinary theft), and civil offences; and in all other cases which present doubt or difficulty, that the charge sheet and summary (or abstract) of evidence are submitted to the Deputy or Assistant Judge Advocate General concerned before trial is ordered (See regs, Army 459);
- (b) That he holds the necessary court-martial warrant empowering him to convene the description of court-martial that he considers appropriate;
- (c) That the court which he has decided to convene is properly composed in accordance with the AA, see also AR 40 any opinion of the convening officer with respect to the composition of the court under the said rule should be stated in the convening order;
- (d) That no officer is detailed to serve on the court who is ineligible or disqualified under AR 39;

Note-In the case of theft from an officers' mess, all the officers of that mess are regarded as interested, and are therefore disqualified.

- (e) That application is made to the Deputy or Assistant Judge Advocate General concerned for the services of a JA when the appointment of a JA is legally required or is desirable (See AAs 129);
- (f) That the No, Rank, Name and unit of each officer detailed to serve are stated in the convening order correctly;
- (g) That in trials by GCM and in complicated cases a prosecutor is specially selected for his experience and knowledge of military law.
- (h) That the order for trial at the foot of charge-sheet is signed by him.
- (i) That the convening order is signed by him.

**APPENDIX III—Contd.**

11. Where the convening officer, or the senior officer, on the spot considers that military exigencies or the necessities of discipline render it impossible or inexpedient to observe any of the Rules referred in AR 36, he must make on IAFD-920 a declaration to that effect specifying the nature of those exigencies or necessities.

12. The convening officer must ascertain whether the accused desires to have a defending officer assigned to assist him at his trial, and, if so, must endeavour to meet his wishes. Should no suitable officer be available, the convening officer must notify the Presiding Officer in writing (See AR 95(2))

13. The convening officer must send to the senior member of the court-martial the convening order and charge-sheet and, where no JA has been appointed copy of the summary of evidence. He should also send, to all the other members, copies of the charge-sheet and to the JA when one has been appointed, a copy each of the charge-sheet, convening order and summary of evidence, AR 37(4) refers. Except in the case of joint trial of two or more persons a separate copy of the convening order should be supplied in respect of every person to be tried.

**GENERAL**

14. The original convening order must be before the court and the Presiding Officer must satisfy himself that the court is duly constituted according to its terms. The court must not make any alteration or correction in the convening order, save as allowed by AR 50(1) in the charge-sheet.

15. In any case of doubt as to constitution of the court, or any other matter affecting jurisdiction of the court or validity of the charges, the Presiding Officer should consult the convening officer before the court assembles, or if the court has assembled, before proceeding with the trial.

16. When, in accordance with AR 89, the court is sworn/affirmed at one time in the presence of several accused persons who are to be tried separately in succession the time at which the convening order is read should be recorded on page 'A' of each IAFD-906, as the time at which the trial of each of the accused commences. In such cases it is desirable that the time of arraignment of each such accused should be inserted on page 'B' of each IAFD-906 before the words; "The accused is arraigned", etc.

17. The full name and description of the accused should be entered on the first page of the proceedings.

18. Care should be taken that, whether a Court of inquiry has been held, the relevant certificate (on the first page of the proceedings) is properly completed.

19. Any person addressing the court or examining or cross-examining a witness, should always do so standing.

20. Every witness, including the officer, producing IAFD-905 must be sworn or affirmed in the presence of the accused to whom his evidence refers; he must not be examined on a former oath taken in the presence of another accused person.

Every prosecutor or other person producing documents must be sworn/affirmed. By the custom of court-martial, however, the accused is allowed to hand in letters, and certificates of character purporting to be in the handwriting of absent officer or former employees, and unless there is reason to doubt their authenticity, they may be accepted.

21. The evidence will usually be taken down in narrative form, questions and answers recorded verbatim will be numbered consecutively ("Q 1", "A 1", etc) throughout.

22. When original documents are not retained by the court and copies are attached to the proceedings, it must be stated in the proceedings that the copies have been compared with the original and found to be correct. As a rule, it is preferable to attach copies and not original documents, to the proceedings. See Notes to AR 67.

**APPENDIX III—Contd.**

23. In accepting IAFs D-905, D-918, D-910 and certified copies or records in Regimental books, attention should be given to para 7(i), 2(d), (e) and (b) ante respectively. Where these documents are given in evidence it is sufficient to record upon the proceedings the mere fact of their production without setting out the facts, which they purport to prove, but the record of evidence should always show that witness identified the accused as the person to whom the particular document relates.

24. A certified true copy of a record in a Regimental book (e.g., on IAFD-918 of an entry in the court-martial book) is sufficient evidence thereof; it is not necessary for the court to compare the copy with the Regimental book.

25. Where the value of arms, ammunition, equipment or public clothing lost or damaged is proved, the accused if convicted should be sentenced to be put under stoppages, notwithstanding the fact that he may also be sentenced to be dismissed from the service, in case the latter part of the sentence should be remitted.

26. Arrears of pay and allowances forfeited by sentence of court-martial under AAs. 71 (k) cannot be applied as compensation for loss or damage. If, therefore, loss or damage has been averred and proved, stoppages should be awarded, even if the accused is also sentenced to forfeiture of arrears, so that compensation may first be paid and any balance remaining over forfeited.

27. Included in IAFD-906 are two sets of pages "C" and "D"—one for proceedings on a plea of "Not guilty" and one for proceedings on a plea of "Guilty", or all "Guilty", to the set pertaining to the plea or pleas recorded is alone to be used, and the unused set should be removed from the proceedings.

When some of the pleas are "Not guilty" and some "Guilty" both sets will be used, the court proceedings first on the plea or pleas of "Not guilty" up to and including the findings, and then on the plea or pleas of "guilty". It is not necessary to insert before page "D" a separate sheet containing the findings of the court upon the plea or pleas of "Not guilty".

28. Where two or more persons are charged and tried jointly on a charge-sheet, only one set of proceedings should normally be used, the relevant pages of IAFD-906 being adapted accordingly, and the replies of each of the accused to the questions set out therein being separately recorded. A separate sheet, however, should be used for the finding and proceedings on conviction, and for the sentence in each case.

29. Where trial proceeds on more than one charge-sheet, all printed matter on page 'A' and the two printed lines at the top of page 'B' should be struck out in the case of the second or any subsequent charge-sheet, the word "second", "third" (or as the case may be) being inserted before the word "charge-sheet" on page 'B'.

30. The charge-sheet is to be inserted in the proceedings after "B" and marked as "B 2", all other documents are to be attached at the end of the proceedings in the order of their production to the court.

31. Every document attached to the proceedings should be signed by a Presiding Officer (or JA) and marked with a reference number, preferably not one used in IAFD-906.

32. In case of a plea of "Guilty", the summary of evidence is to be annexed to the proceedings. In case of a plea of "Not guilty" it will be annexed if it or any part of it has been put in evidence at the trial. In other cases the summary will merely be enclosed with the proceedings when sent to the confirming officer.

33. All erasures of written or printed matter, and all interlineations and corrections should be initialed by the Presiding officer or JA, See Notes to AR 92.

34. Pages should be numbered consecutively up to the end of the proceedings after they have been put together in the order prescribed. In case of revision, the latter proceedings are added at the end, and the numbering of pages carried on.

**APPENDIX III—Contd.**

35. Care must be taken that the proceedings are both signed and dated by the Presiding Officer and the JA (if any). AR 67 (2) refers.

**DUTIES OF PROSECUTOR**

36. For the general duties of a prosecutor see AR 77(1) and notes thereto.

37. **Duties before trial-** The prosecutor should have previous knowledge of the subject matter of the charge or charges. For that reason the officer detailed as prosecutor must make it his business to acquaint himself with the circumstances, and assure himself that the various rules relating to procedure before trial have been complied with (see Note to AR 43). He will, as a rule, be the officer who recorded the summary of evidence. The court will look to him for an explanation of any defect or omission apparent or alleged by the accused.

On being detailed for duty he should-

- (a) Obtain a copy of the charge-sheet and summary of evidence, and enquire whether there is any correspondence or other material related to the case, which he should peruse and note.
- (b) If he thinks there is any legal defect, irregularity, or serious omission in either the charge-sheet or the summary of evidence, he should refer to the CO of the accused's unit. The ability to detect irregularities connotes a working knowledge of the Army Rules 1954, and of the laws of evidence.
- (c) Satisfy himself that ARs 33 and 34 and in the case of joint trial AR 35, have been complied with.
- (d) Satisfy himself that proper steps are being taken to secure the attendance of all necessary witnesses.
- (e) Obtain or prepare a record of the accused's service (IAFD-905) for production at the trial if required. This form must be signed by the officer having the custody of the Regimental book.
- (f) Consider whether an opening address is desirable, or is likely to be required from him by the court [AR 56 (3)]. If so, prepare such an opening address, setting out in the form of a narrative the facts which are alleged against the accused, and the nature of the evidence by which those facts are to be proved. The opening address must be as impartial as he can make it, free from unnecessary comment, denunciation or prejudice. There must be no reference in it to any allegation which is not to be proved in evidence subsequently at the trial. An opening address is not ordinarily required in disciplinary cases of a simple nature, but is valuable where accounts are involved or the evidence is largely circumstantial.
- (g) On the morning of the trial take with him to the court a certificate by a medical officer stating that he has examined the accused on that morning, and that he is fit for trial.
- (h) Assure himself that all witnesses and necessary exhibits are present.

**38. Duties at the trial:-**

- (a) On the opening of the Court the prosecutor presents the medical certificate to the Presiding Officer.
- (b) If any material witness is absent, the prosecutor should inform the court at once, and if necessary apply for an adjournment (AR 138).
- (c) If a court of inquiry has been held respecting a matter upon which a charge against the accused is founded, the prosecutor should hand to the court a list of

**APPENDIX III—Contd.**

names of the officers who sat, on the court of inquiry. The written record of the proceedings of such court of inquiry must not be laid before the court-martial (AR 41)

- (d) As to the prosecutor's right to address the court and call witnesses in reply in the event of a special plea of plea in bar of trial, see ARs 49, 51 and 53.
- (e) Where the accused pleads 'Guilty', the duties of the prosecutor are confined to calling such witnesses as may be necessary if the summary be insufficient [AR 54 (3)], and producing IAFD-905.
- (f) Where the accused pleads "Not guilty", the prosecutor makes his opening address if any, and it is in writing, hands it in and calls his first witness.
- (g) Before calling the witnesses, and as the case proceeds, the prosecutor must consider whether he should call all those whose evidence is in the summary of evidence, and whether if it is his duty to call as a witness any person whose evidence is not contained in summary (ARs 134 and 135)
- (h) As to accomplices as witnesses for the prosecution see para 4 ante.
- (i) After a witness for the prosecution has been sworn or affirmed, the prosecutor will ascertain the witness's No. Rank, Name, unit station, address, occupation, etc, as may be material and will elicit from the witness the relevant facts to which the witness can speak. This may be done by means of questions of a non-leading Character (see Part I, Chapter V paras 102-106), or by permitting the witness to tell his own story, questions being subsequently asked to make good any omissions. A series of short simple questions will generally assist the witness to recount facts in chronological order, and the Presiding Officer or JA in making the record.
- (j) The rules which govern cross-examination are described in Part-I, Chapter V, paras 107-113. The limits within which re-examination is permitted are set out in para 116. It may happen that a question in cross-examination has been so framed as to compel the witness to answer simply "yes or No", whereas there is within the prosecutor's knowledge an explanation which should in fairness be made. In such a case the prosecutor may in re-examination refer the witness to that question and answer, and ask him if he has anything to add or explain. The prosecutor should not dismiss a witness until he has ascertained whether the court desires to question him and until AR 141 (2), (3), (4) has been complied with.
- (k) The prosecutor must take care that each exhibit which he desires to put before the court is produced and identified by one of his witnesses. If an exhibit (e.g., the property in respect of which theft is alleged to have been committed) is to be referred to by more than one witness, each witness who refers to it must be invited to look at the exhibit, and say whether he identifies it. If the prosecutor is himself producing documents he should do so, after being sworn or affirmed as a witness, before he calls his other witnesses [AR 56(5) and Note thereto]. Neither the prosecutor nor a witness may refer to the contents of a document which is not before the court, unless evidence is given accounting for its absence (See Part I, Chapter V, paras 76-77)
- (l) The prosecutor having called his witnesses, the case for the prosecution is closed. The subsequent procedure depends upon the exercise by the accused of his rights and is fully set out in ARs. 58 and 59.
- (m) If the accused calls any witnesses to the facts, it is the duty of the prosecutor to assist the court to test the value of their evidence by cross-examination. The result of omission to cross-examine is frequently that the evidence for the defence

**APPENDIX III—Contd.**

stands unchallenged, and the prosecutor cannot properly, in a subsequent address, characterize as untrue a defence which he has not attempted, by question to the witnesses at the proper time, to impugn cross-examination is not limited to the matters dealt with in the examination in chief. It must however, be confirming to matters relevant, directly or indirectly, to the issue. Leading questions may be asked in cross-examination, but not questions which assume that facts have been given in evidence which have not been given (See Part I, Chapter V, para 109). As to injurious questions see para 110 *ibid*. As to calling witnesses in reply to the defence, see AR 143 and notes thereto.

- (n) The desirability of making a closing address at the appropriate time as provided in ARs 58 and 59, it is a matter for the prosecutor's discretion. If there is any evidence or argument put forward by the defence which he thinks might seriously mislead the Court, he should comment on it. He is entitled to sum up the evidence generally and to point out any weakness in the defence, and to suggest the inferences which the court may draw from the fact which has not been proved in evidence (see Notes to AR 77).
- (o) If the accused is convicted on any charge, the prosecutor or some other person in a position to do so, is sworn or affirmed (if he has not already been sworn or affirmed as a witness in the case) and produces evidence (IAFD 905) of the character, age, service, rank, etc., of the accused (See AR 64 and Notes thereto)

**DUTIES OF DEFENDING OFFICER****39. Duties before trial:—**

- (a) The defending officer, like the prosecutor requires a working knowledge of the Army Rules, 1954 and of the laws of evidence. He must also make himself acquainted with the details of the case.
- (b) The proper preparation of the defence :

Note to AR 95 includes,—

- (i) Study of the charge-sheet and summary of evidence and consideration of legal points which he may raise, or which may arise upon them, e.g., objection to a charge, plea to the jurisdiction, plea in bar of trial, admissibility of a confession or of other evidence.
- (ii) Ascertaining from the accused what is his answer, if any, to each charge.
- (iii) Communication with possible witnesses for the defence, to ascertain if they are able to give evidence in support of the accused's case, and the taking of appropriate steps to secure their attendance at the trial [ARs 34(1) and 136].

NOTE.—He is not entitled to interview witnesses for the prosecution without special authority.

- (c) The defending officer must bear in mind that the ultimate responsibility for the decision on the plea which is to be offered on each charge must rest upon the accused himself. He may properly advise on this point, but should put no pressure on the accused, except to dissuade him from pleading guilty, where he appears to have an answer, however, slight, to the charge. The defending officer's duty at the trial will be to present the accused's defence in the best possible manner. He may properly prepare arguments on fact or law, which his own reason of ingenuity may suggest, but it would be improper for him to advise or suggest to the accused an account of the facts, other than that which the accused himself desires to give.



**APPENDIX III—Concluded**

- (d) The defending officer is not called upon to judge the truth or otherwise of the accused's defence, nor is he permitted to express his own opinion or belief (AR 100). To avoid, however, giving countenance to a line of defence which is incompatible with his duty as an officer, he should apply through his CO to the convening officer for permission to withdraw from the case.

**40. Duties at the trial.**

- (a) Having the rights, duties, and obligations of counsel, the defending officer must himself conduct the case as representing the accused, i.e., he will himself cross-examine witness for the defence, take any objections, make any submissions, and address the court on the accused's behalf.
- (b) The defending officer has the right to make an application for adjournment [AR 34(4)] and to address the court in support of it. It should not be made on the ground of a technical irregularity or omission, merely as a protest, where no benefit can accrue to the presentation of the defence from the postponement of the trial.
- (c) It is the defending officer's duty to question each witness for the prosecution on any matter which is to be alleged in defence in so far as this matter is or should be within the witness's knowledge (See Part I, Chapter V, paras 107 to 113). As to injurious questions, see para 110.
- (d) The defending officer may take objection to any question put by the prosecutor to a witness for the prosecution on one of the following grounds; the objection should be made if possible before the witness answers (AR 141(1)):
- (i) That it is a leading question.
  - (ii) That it invites hearsay, or an account of an involuntary confession, or evidence of the accused's bad character when that character has not been put in issue. etc., (Part I, Chapter V, para 60).
- (e) At the close of the case for the prosecution, the defending officer may submit that the accused has no case to answer, and therefore, should not be called upon for his defence, because, the prosecution has not produced evidence in support of one or more essentials in the charge (AR 57).

NOTE.—This submission must be to the effect that there is no evidence at all on the point or points, and not that the evidence is untrustworthy.

- (f) Where a witness not examined at the summary of evidence is called by the prosecutor, the defending officer may apply for an adjournment, or postponement of cross-examination (AR 135).
- (g) The defending officer is entitled to consult the JA, if one has been appointed, on any question of law or procedure relating to the charge or trial [AR 105(1)]
- (h) The defending officer must throughout the proceedings treat the court with respect and candour.

**APPENDIX IV****PART I****FORM 1**

*Form for use at summary trials of Officers. JCOs and WOs under Sections 83 to 85 of the Army Act*

ACCUSED .....

RANK AND NAME.....

UNIT.....

When the authority dealing summarily with the case decides (with the written consent of the accused) to dispense with the attendance of witnesses—

Questions to accused

1. Have you received a copy of the charge-sheet and summary of evidence?

ANSWER.....

2. Have you had sufficient time to prepare your defence?

The charge-sheet is read.

ANSWER.....

3. Are you guilty or not guilty of the charge(s) against you which you heard read?

ANSWER.....

The summary of evidence is read aloud or the authority dealing summarily with the case informs the accused that he has already perused it.

4. Do you wish to make a statement?

ANSWER.....

If the accused desires to make a statement, he should do so now.

If at the conclusion of the hearing the authority dealing summarily with the case considers that the charge should be dismissed, he is to examine the accused's record of service or conduct sheet.

If the authority dealing summarily with the case proposes to award a punishment other than a reprimand, severe reprimand, or penal deductions, in the case of an officer, a JCO or a WO, he shall put the following question to the accused :—

5. Do you elect to be tried by court-martial or will you accept my award ?

ANSWER.....

FINDING.....

AWARD.....

STATION.....

DATE.....

Signed .....

NOTE 1.—The oral statement of the accused made in answer to question 4 will be either recorded or a gist thereof prepared and attached.

NOTE 2.—After disposal of a charge, if the finding is that of guilty, this form accompanied by Army Form IAFF-3013 ( in duplicate), summary of evidence, statement of the accused and written consent of the accused will be forwarded through the usual channels to Headquarters Command concerned who will show them to the Dy JAG of the Command. In the case of punishments awarded by GOC-in-C of a Command, these documents will be forwarded to the Adjutant General (PS-I), Army Headquarters, DHQ. PO NEW DELHI-11. When the finding is that of not guilty, only the finding will be communicated to Headquarters Command concerned in the case of JCOs and WOs and to Army Headquarters in the case of officers.

In the case of a JCO or a WO this form together with the summary of evidence, statement of the accused and the written consent of the accused will be returned to the unit for attachment to his Regimental Conduct Sheet (IAFF-3013).

**APPENDIX IV—Contd.****FORM 2**

*Form for use at summary trials of Officers, JCOs and WOs under sections 83 to 85 of the Army Act*

ACCUSED.....

RANK AND NAME.....

UNIT.....

When the authority dealing summarily with the case does not decide to dispense with the attendance of witnesses or when the accused requires their attendance.

Question to accused—

1. Have you received a copy of the charge-sheet and summary of evidence?

ANSWER.....

2. Have you had sufficient time to prepare your defence?

ANSWER.....

The Charge-sheet is read.

3. Are you guilty or not guilty of the charge(s) against you which you heard read?

ANSWER.....

The witnesses give their evidence, accused being permitted to cross-examine.

4. Do you wish to make a statement?

ANSWER.....

5. Do you desire to call any witnesses?

ANSWER.....

The accused makes a statement and his witnesses give evidence.

If at the conclusion of the hearing the authority dealing summarily with the case considers that the charge should not be dismissed; he is to examine the accused's record of service or conduct sheet.

If the authority dealing summarily with the case proposes to award a punishment other than a reprimand, severe reprimand or penal deductions, in the case of an officer, a Junior Commissioned Officer or a Warrant Officer, he shall put the following question to the accused:—

6. Do you elect to be tried by court-martial or will you accept my award?

ANSWER.....

FINDING.....

AWARD.....

STATION.....

DATE.....

Signed .....

Note.—The oral statement of the accused made in answer to question 4 will be either recorded or a gist thereof prepared and attached.

After disposal of a charge, if the finding is that of guilty, this form accompanied by Army Form IAFF-3013 (in duplicate) summary of evidence and the statement of the accused will be forwarded through the usual channels to Headquarters Command concerned who will show them to the Dy JAG of the Command. In the case of punishments awarded by GOC-in-C of a Command, these documents will be forwarded to the Adjutant General (PS-1), Army Headquarters DHQ PO. New Delhi-11.

When the finding is that of not guilty, only the finding will be communicated to Headquarters Command concerned in the case of JCOs and WOs and to Army Headquarters in the case of officers.

In the case of a JCO or a WO this Form together with the summary of evidence and the statement of the accused will be returned to the unit for attachment to his Regimental Conduct Sheet (IAFF-3013).

**APPENDIX IV—Contd.****PART II****WARRANTS UNDER SECTIONS 168, 169(2) AND 173 OF THE ARMY ACT  
FORM A**

*Warrant of commitment for use when a prisoner is sentenced for life imprisonment  
(SRO 404/60) (Army Act Section 168).*

To

The Superintendent of the (a) ..... prison.

Whereas at a (b).....court-martial, held at .....on the.....  
day of ..... 20..... (Number, Rank, Name).....of the.....  
Regiment.....was convicted of (the offence to be briefly stated here as  
“desertion on active service”, “corresponding with the enemy”, as the case may be).

And whereas the said (b).....court-martial on the..... day of.....  
20..... passed the following sentence upon the said (Name).....that is  
to say:—.....

.....  
.....  
.....

(Sentence to be entered in full, but without signature).

And whereas the said sentence has been duly confirmed by (c) as required by law (d).

This is to require and authorise you to receive the said (Name)....., into  
your custody in the said prison as by law is required, together with this warrant, until he shall  
be delivered over by you with the said warrant to the proper authority and custody for the  
purpose of undergoing the aforesaid sentence of imprisonment for life, The aforesaid sentence  
has effect from the (e).....

Given under my hand at..... this the.....day of.....20.....

Signature (f)

---

(a) Enter name of civil prison.

(b) General, or summary general.

(c) Name and description of confirming authority.

(d) Add if necessary “with a remission of.....”.

(e) Enter date on which the original proceedings were signed.

(f) Signature of commanding officer of prisoner or other prescribed officer, See AR 166.

**FORM B**

*Warrant of commitment for use when a prisoner is sentenced to imprisonment  
which is to be undergone in a civil prison*

[Army Act, Section 169(2)]

To

The Superintendent.....of..... the (a).....Prison.

Whereas at a (b).....court-martial held at.....on the.....  
day of .....20....., (Number, Rank, Name).....of the.....  
Regiment.....was duly convicted of (the offence to be briefly stated here, as  
“desertion”, “theft”, “receiving stolen goods”, “fraud”, “disobedience of lawful command”  
or as the case may be) .....

---

(a) Enter name of civil prison.

(b) General, district, summary general or summary.

**APPENDIX IV—Contd.**

And whereas the said (b)..... Court-Martial..... on the ..... day of..... 20..... passed the following sentence upon the said (Name)..... that is to say :—

(Sentence to be entered in full, but without signature).

And whereas the said sentence.

(c) has been duly confirmed by (d)..... as required by law (e)..... is by law valid without confirmation.

This is to require and authorise you to receive the said (name) into your custody together with the warrant, and there carry the aforesaid sentence of imprisonment into execution according to law. The sentence has effect from the (f).....

The period spent by (name)..... in civil/military custody during the investigation, inquiry or trial of the same case is (g)..... and the said period (ff)..... shall be set off against the aforesaid sentence of imprisonment.

Given under my hand at ..... this the ..... day of ..... 20.....

Signature (g)

(c) Strike out in applicable words.

(d) Name and description of confirming authority.

(e) Add if necessary “with remission of .....”.

(f) Enter date on which the Original proceedings were signed.

(ff) Enter the exact period (years, months and days) spent in military /civil custody during investigation, inquiry or trial in the same case.

(g) Signature of commanding officer of prisoner or other prescribed officer, see AR 166.

**FORM C**

*Warrant of commitment for use when a prisoner is sentenced to imprisonment which is to be undergone in a military prison.*

*[Army Act. Section 169(2)]*

To

The Commandant..... of the Military Prison at.....

Whereas at (a)..... court-martial held at ..... on the..... day of..... 20..... (Number, Rank, Name)..... of the..... Regiment..... was duly convicted of..... (the offence to be briefly stated here as “desertion”, “theft”, “receiving stolen goods”, “fraud”, “disobedience of lawful command” or as the case may be).

And whereas the said (a)..... court-martial on..... the ..... day of..... 20..... passed the following sentence upon the said (Name)..... that is to say;

(Sentence to be entered in full, but without signature)

And whereas the said sentence has been duly confirmed by (b).

\*as required by law (c).

\* is by law valid without confirmation.

**APPENDIX IV—Contd.**

This is to require and authorise you to receive the said (Name)..... into your custody together with this warrant, and there carry the aforesaid sentence of imprisonment into execution according to law. The sentence has effect from (d).....

The period spent by (name) ..... in civil custody/military custody during the investigation, inquiry or trial of the same case is (dd)..... and the said period (dd)..... shall be set off against the aforesaid sentence of imprisonment.

Given under my hand ..... this ..... day of ..... 20.....

Signature (e)

\*Strike out inapplicable words.

- (a) General, district, summary general or summary.
- (b) Name and description of confirming authority.
- (c) Add if necessary "with remission of.....".
- (d) Enter date on which the original proceedings were signed.

"(dd) Enter the exact period (years, months and days) spent in military/civil custody during investigation, inquiry or trial in the same case"

- (e) Signature of commanding officer 'of prisoner or other prescribed officer See AR 166.

**FORM D**

*Warrant for use when a prisoner is pardoned or his trial set aside, or when the whole sentence, or the unexpired portion thereof, is remitted.*

*(Army Act, Section 173).*

To

The Superintendent/Commandant of the (a) ..... Prison.

Whereas (Number, Rank, Name)..... of the Regiment is confined in the (a)..... Prison under a warrant issued by (b)..... in pursuance of a sentence of (c)..... passed upon him by a (d)..... court-martial held at..... on..... and whereas (e)..... has in the exercise of the powers conferred upon him by the Army Act, passed the following orders regarding the aforesaid sentence that is to say: —(f).....

This is to require and authorise you to forthwith discharge the said (Name)..... from your custody unless he is liable to be detained for some other cause; and for your so discharging him this shall be your sufficient warrant.

Given under my hand at..... this the..... day of..... 20.....

Signature (g)

- (a) Enter name of civil or military prison.
- (b) Enter name or designation of officer who signed original warrant.
- (c) Enter original sentence (if this was reduced by the confirming officer or other superior authority the sentence should be entered thus) :  
"2 years' rigorous imprisonment reduced by confirming officer to 1 year".
- (d) General, district, summary general or summary,
- (e) Name and designation of authority pardoning prisoner, mitigating sentence or setting aside trial.
- (f) Order to be set out in full.
- (g) Signature of prescribed officer, See AR 167.



**APPENDIX IV—Contd.**

**FORM E**

*Warrant for use when a sentence of imprisonment for life is reduced by superior authority to one of a shorter period of the same*

*(Army Act, Section 173)*

To

The Superintendent.....Prison

Whereas (Number, Rank, Name) of the Regiment is confined in the (a)..... prison under a warrant issued by (b).....in pursuance of a sentence..... of (c).....passed upon him by a (d).....court-martial held at..... on..... and whereas (e)..... has, in the exercise of the powers conferred upon him by the Army Act, passed the following order regarding the aforesaid sentence: that is to say : (f).....

.....

This is to require and authorise you to keep the said (Name).....in your custody together with this warrant, in the said prison as by law is required until he shall be delivered over by you with the said warrant to the proper authority and custody, for the purpose of his undergoing the punishment of imprisonment for life under the said order. And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof the warrant is issued. The period of such imprisonment for life will reckon from the (g).....

Given under my hand at.....this the.....day of..... 20.....

Signature (h)

- (a) Enter name of civil prison.
- (b) Enter name or designation of officer who signed original warrant.
- (c) Enter original sentence (If this was reduced by the confirming officer or other superior authority the sentence should be entered thus):  
“..... years” rigorous imprisonment reduced by confirming officer to..... years”.
- (d) General or summary general.
- (e) Name and designation of authority varying the sentence.
- (f) Order to be set out in full.
- (g) Enter date on which original sentence was signed.
- (h) Signature of prescribed officer. See AR 167.

**FORM F**

*Warrant for use when a sentence of imprisonment is reduced by superior authority or when one of imprisonment for life is reduced to one of imprisonment (Army Act, Section 173).*

To

The Superintendent/Commandant of the (a).....Prison.

Whereas (Number, Rank, Name) of the Regiment is confined in the (a)..... prison under a warrant issued by (b).....in pursuance of sentence of (c)..... passed upon him by a (d).....court-martial held at..... on..... and whereas (e) has, in the exercise of the powers conferred upon him by the Army Act, passed the following order regarding the aforesaid sentence that is to say :- (f).....

.....

**APPENDIX IV—Concluded**

This is to require and authorise you to keep the said (Name).....in your custody together with this warrant, and there to carry into execution the punishment of imprisonment under the said order according to law. And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof this warrant is issued. The period of such improvement will reckon from the (g).....

Given under my hand at..... this the .....day of.....  
20.....

Signature (h)

- (a) Enter name of civil or military prison.
- (b) Enter name or designation of officer who signed original warrant.
- (e) Enter original sentence (if this was reduced by the confirming officer or other superior authority the sentence should be entered thus:  
‘2 years’ imprisonment reduced by confirming officer to 1 year”.
- (d) General, district, summary general or summary.
- (e) Name and designation of authority varying the sentence.
- (f) Order to be set out in full.
- (g) Enter date on which original proceedings were signed.
- (h) Signature of prescribed officer. See AR 167.

**FORM G**

*Warrant for use when prisoner is to be delivered in to military custody.  
(Army Act, Section 173).*

To,

The Superintendent/Commandant.. .....of the (a).....  
Prison.

Whereas (Number, Rank, Name) .....of the Regiment is confined in the (a).....Prison under a warrant issued by (b).....in pursuance of a sentence of (c).....passed upon him by a (d).....court-martial held at.....and whereas (e)..... has, in the exercise of the powers conferred upon him by the Army Act passed the following order regarding the aforesaid sentence that is to say (f):—.....

This is to require and authorise you to forthwith deliver the said (Name)..... to the officer, junior commissioned officer, warrant officer, or non-commissioned officer bringing this warrant.

Given under my hand at.....this the,.....day of.....  
20.....

Signature (g)

- (a) Enter name of civil or military prison.
- (b) Enter name or designation of officer who signed original warrant.
- (c) Enter original Sentence (if this was reduced by the confirming officer or other superior authority the sentence should be entered thus);  
“2 years’ rigorous imprisonment reduced by confirming officer to 1 year”.
- (d) General, district, summary general or summary.
- (e) Name and designation of authority issuing order.
- (f) Order to be set out in full.
- (g) Signature of prescribed officer. See AR 167.

**APPENDIX V**WARRANT UNDER ARMY RULES, 169, [170A]<sup>1</sup> AND 171**FORM H***Warrant committing to civil prison custody of a person sentenced to death.**(Army Rule 169)*

To

The Superintendent of the (a).....Prison.

Whereas a (b)..... court-martial held at ..... on the..... day of..... 20.....

(Number, Rank, Name) of the.....Regiment was convicted of (offence to be briefly stated);

And whereas the said (b)..... court-martial on the.....day of ..... passed sentence of death on the said

(Name).....

This is to require and authorise you to receive and hold said (Name)..... into your custody in the said prison as by law is required together with this warrant, until such time as a further warrant in respect of the said (Name) shall be issued to you,

Given under my hand at ..... this the.....day of..... 20.....

Signature (c)

(a) Enter name of civil person.

(b) General or summary general.

(c) Signature of commanding officer of person.

**FORM I***Warrant to obtain person sentenced to death from civil prison custody in order to carry out such sentence [Army Rule 170A]<sup>1</sup>*

To

The Superintendent of the (a) ... ..Prison.

Whereas (Number, Rank, Name).....of the Regiment having been sentenced to suffer death on the day of..... 20..... by a (b)..... court-martial held at.....is held in the said prison under a warrant issued by (c).....

And whereas, the said sentence having been duly confirmed by (d) as by law required an order to carry out the said sentence has been issued to me (e)..... (Name and Rank).....

This is to require and authorise you to deliver forthwith the said (Name)..... to the officer/Junior commissioned officer/warrant officer/non-commissioned officer bringing this warrant.

Given under my hand at.....this.....day of..... 20.....

Signature (f)

(a) Enter name of civil prison,

(b) General or summary general.

(c) Enter name or designation of officer who signed original warrant

(d) Name and description of confirming authority.

(e) Name and designation of the officer to whom the order is issued.

(f) Signature of the officer by whom the order is issued.

<sup>1</sup> Substituted vide SRO 17(E) dated 6th December, 1993.

**APPENDIX V—Contd.****FORM-1A***Warrant of Execution of Sentence of Death by Military Authorities  
(Army Rules 170A and 170B)***PART I**

To,

(a).....

Whereas (Number, Rank, Name)..... of the .....  
(unit) having been sentenced to suffer death on the ..... day of  
..... 20..... by it (b)..... court martial held  
at ..... (c), is held in the (d)....., is held in the prison under  
warrant issued by (e).....

AND Whereas, the said sentence having been confirmed by (f)....., a  
copy of the order of the confirming authority certifying the confirmation of the sentence  
being annexed hereto;

This is to authorise and require you to carry the said sentence into execution by  
causing the said..... **TO BE HANGED BY THE NECK UNTIL HE BE DEAD**  
**AT (g)..... to be shot to death at (g)..... and to return this warrant to (h).....**  
with an endorsement certifying that the sentence has been executed.

Dated, this..... day of..... 20.....

Signature (i).....

**PART II****Return of Warrant**

The above sentence passed on (number)..... (rank).....  
(name)..... was carried into effect at (g)..... hours on the  
..... day of..... 20.....

Signature (j)

**PART III****Certificate of Medical Officer**

I..... (Number, rank, name), hereby certify that I have .....  
examined the body of (Number) ..... rank ..... (name) ..... upon whom  
the sentence of death was carried into effect, this day, at (g)..... and that on  
such examination I found..... the said person was dead.

Signed at (place)..... this the..... (day of) ..... 20.....

Signature (j).....

Rank, and Unit

Commissioned Medical Officer of the  
Armed Forces of India

- 
- (a) Enter the rank, name and designation of provost marshal or other officer responsible for carrying the sentence of death into effect.
  - (b) Insert "General" or "Summary General"
  - (c) Enter the place of trial.
  - (d) Enter the name of the prison.
  - (e) Enter name and designation of officer who signed the original Warrant.
  - (f) Name and description of confirming authority.
  - (g) Time, date and place of execution.
  - (h) The officer commanding the Army, Army Corps or Division or an Officer Commanding Forces in the field, who has issued the warrant.
  - (i) Signature of the officer by whom the warrant is issued.
  - (j) Signature of the officer executing the sentence.

**APPENDIX V—Contd.****FORM-1B****WARRANT OF EXECUTION OF SENTENCE OF DEATH IN CIVIL PRISON***(Army Rules 170A and 170B)***PART I**

To,

The superintendent of the (a).....Prison whereas (Number, Rank, Name).....of the .....(Unit) ..... having been sentenced to suffer death on the .....day of .....20.....by a .....

(b) court martial held at.....(c), has been by a warrant issued by (d)..... committed to your custody.

AND Whereas, the said sentence having been confirmed by (e)..... a copy of the order of the confirming authority certifying the confirmation of the sentence being annexed hereto; This is to authorize and require you to carry the said sentence into execution by causing the said.....**TO BE HANGED BY THE NECK UNTIL HE BE DEAD AT** (f).....and to return this warrant to (g)..... with an endorsement certifying that the sentence has been executed.

Dated, this.....day of .....20.....

Signature (h) .....

**PART II****Return of Warrant**

The above sentence passed on (number)..... (rank).....(name).....was carried into effect at (g).....hours on the.....day of .....20.....

Signature (i) .....

(Superintendent of Prison)

- (a) Enter name of civil prison
- (b) Insert "General" or "Summary General"
- (c) Enter the place of trial
- (d) Enter name and designation of officer who signed the original warrant.
- (e) Name and description of confirming authority.
- (f) Time, date and place of execution
- (g) The officer commanding the Army, Army Corps or Division or an officer commanding forces in the field, who has issued the warrant.
- (h) Signature of the officer by whom the order is issued.

**FORM J**

*Warrant for use when the sentence of a person under sentence of death and committed to custody in a civil prison is commuted to a sentence of imprisonment for life*  
(Army Rule 171)

To

The Superintendent of the (a).....Prison.

Whereas.....(Number, Rank and Name) of the.....  
Regiment, is held in the (a)..... prison under a warrant issued by (b).....in  
pursuance of a sentence of death passed upon him by (c).....court-martial  
held at..... on.....and whereas (d).....has in exercise of the powers  
conferred upon him by the Army Act, passed the following order regarding the aforesaid  
sentence that is to say : (e).....  
.....

This is to require and authorise you to keep the said (name).....in your  
custody together with this warrant in the said prison as by law is required until he shall be  
delivered over by you with the said warrant to the proper authority and custody for the  
purpose of his undergoing the punishment of imprisonment for life, under the said order.  
And this is further to require and authorise you to return to me the original warrant of  
commitment in lieu whereof this warrant is issued. The period of such imprisonment for life  
will reckon from the (f).....

Given under my hand at.....this the.....day of 20.....

Signature (g)

- 
- (a) Enter name of civil prison.
- (b) Enter name or designation of officer who signed original warrant.
- (c) General or summary general.
- (d) Name and designation of authority commuting the sentence.
- (e) Order to be set out in full.
- (f) Enter date on which original sentence was signed.
- (g) Signature of commanding officer.



**APPENDIX V—Contd.**

**FORM K**

*Warrant for use when the sentence of a person under sentence of death and committed to custody in a civil prison is commuted to a sentence of imprisonment to be served in the same prison.  
(Army Rule 171)*

To

The Superintendent the (a).....Prison.

Whereas.....(Number, Rank and Name) of the..... Regiment, is held in the (a)..... prison under a warrant issued by (b)..... in pursuance of a sentence of death passed upon him by a (c).....court-martial held at..... on.....and whereas (d)..... has in the exercise of the powers conferred upon him by the Army Act, passed the following order regarding the aforesaid sentence, that is to say:— (e) .....

This is to require and authorise you to keep the said (name).....in your custody together with this warrant, and there to carry into execution the punishment of imprisonment under the said order according to law. And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof this warrant is issued. The period of such imprisonment will reckon from the (f).....

Given under my hand at..... this the.....day of.....20.....

Signature (g)

- (a) Enter name of civil prison.
- (b) Enter name or designation of officer who signed original warrant.
- (c) General or summary general.
- (d) Name and designation of authority commuting the sentence
- (e) Order to be set out in full.
- (f) Enter date on which original proceedings were signed.
- (g) Signature of commanding officer.

**FORM L**

*Warrant for use when a person who, after having been sentenced to death, has been committed to custody in a civil prison is to be delivered into military custody for a purpose other than carrying out the sentence of death  
(Army Rule 171)*

To

The Superintendent of the (a).....Prison.

Whereas.....(Number, Rank and Name) of the Regiment is held in the (a).....prison under a warrant issued by (b)..... in pursuance of a sentence of death passed upon him by a (c).....court-martial held at..... on.....and whereas (d)..... has in the exercise of the powers conferred upon him by the Army Act passed the following order regarding the aforesaid sentence: that is to say:— (e).....

**APPENDIX V—Contd.**

This is to require and authorise you to forthwith deliver the said (Name).....  
to the officer, junior commissioned officer, warrant officer or non-commissioned officer bringing  
this warrant.

Given under my hand at.....this the..... day  
of .....20.....

Signature (f)

---

- (a) Enter name of civil prison.
- (b) Enter name or designation of officer who signed original warrant.
- (c) General or summary general.
- (d) Name and designation of authority issuing order.
- (e) Order to be set out in full.
- (f) Signature of commanding officer.

---

# THE ARMY ACT.

## ARRANGEMENT OF SECTIONS.

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# THE ARMY ACT.

[41 & 45 Vict. c. 58.]

*An Act to consolidate the Army Discipline and Regulation Act, 1879, Ss. 1-3.  
and the subsequent Acts amending the same (a).*

## Preliminary.

- |   |                                  |
|---|----------------------------------|
| 1. This Act may be cited for all purposes as the Army Act.  | Short title of Act.              |
| 2. This Act shall continue in force only for such time and subject to such provisions as may be specified in an annual Act of Parliament bringing into force, or continuing the same. | Mode of bringing Act into force. |

## NOTE.

For explanation of the reasons for bringing this Act into force annually by a separate Act, see ch. ii, page 11, note (a); and para. 35.

3. This Act is divided into five parts, relating to the following subject-matter; that is to say, Division of Act.

Part I, discipline :

Part II, enlistment :

Part III, billeting and impressment of carriages :

Part IV, general provisions :

Part V, application of military law, saving provisions, and definitions.

## PART I.

### DISCIPLINE.

#### CRIMES AND PUNISHMENTS.

#### *Offences in respect of Military Service.*

4. Every person subject to military law who commits any of the following offences; that is to say, Part I.  
s. 4.

(1.) Shamefully abandons or delivers up any garrison, place, post, or guard, or uses any means to compel or induce any Offences in relation to the enemy punishable with death.

(a) The Act is printed with the amendments introduced by the Army (Annual) Act, 1882, and the subsequent Annual Acts down to and inclusive of the Act of 1907, in accordance with the directions of 48 & 49 Vict. c. 8, and also incorporates the amendments made by the Territorial and Reserve Forces Act, 1907.

Under s. 14 of the Army (Annual) Act, 1901, amendments of the Army Act contained in any Act continuing the Army Act come into operation in any place as from the day from which the Army Act is continued in that place.

Part I.  
s. 4.

- governor, commanding officer, or other person shamefully to abandon or deliver up any garrison, place, post, or guard, which it was the duty of such governor, officer, or person to defend ; or
- (2.) Shamefully casts away his arms, ammunition, or tools in the presence of the enemy ; or
  - (3.) Treacherously holds correspondence with or gives intelligence to the enemy, or treacherously or through cowardice sends a flag of truce to the enemy ; or
  - (4.) Assists the enemy with arms, ammunition, or supplies, or knowingly harbours or protects an enemy not being a prisoner ; or
  - (5.) Having been made a prisoner of war, voluntarily serves with or voluntarily aids the enemy ; or
  - (6.) Knowingly does when on active service any act calculated to imperil the success of His Majesty's forces or any part thereof ; or
  - (7.) Misbehaves or induces others to misbehave before the enemy in such manner as to show cowardice,
- shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned.

#### NOTE.

*Subject to military law.*—This includes not only officers and soldiers, but also camp followers, sutlers, &c. See ss. 175, 176, and as to natives of India, s. 180.

Paragraph (1). *Shamefully abandons, &c.* This offence can only be committed by the person in charge of the garrison, post, &c., and not by the subordinate under his command. The surrender of a place by an officer charged with its defence can only be justified by the utmost necessity, such as want of provisions or water, the absence of hope of relief, and the certainty or extreme probability that no further efforts could prevent the place with its garrison, their arms and magazines, falling into the hands of the enemy. Unless the necessity is shown, the conclusion must be that the surrender or abandonment was shameful, and therefore an offence under this section. The word *post* includes any point or position (whether fortified or not) which a detachment may be ordered to hold ; and the abandonment of a post would also include the abandonment of a siege if there were no circumstances to warrant such a measure. It has not the same meaning as in s. 6 (1), where it has reference to an individual.

A charge under the first part of this sub-section must detail some circumstances which make the abandonment in a military sense shameful.

Paragraph (2). *Shamefully casts away.* The charge must show the circumstances which make the act in a military sense shameful. The word "shamefully" is held to mean by a positive and disgraceful dereliction of duty, and not merely through negligence or misapprehension or error of judgment.

Paragraph (3). *Treacherously or through cowardice.* The charge must show the circumstances which indicate the treachery or cowardice. If there is no treachery or cowardice, the charge should be laid under section 5 (4).



Paragraph (4). *Supplies.* This would include the taking any steps to restore a supply of water cut off by our forces. Part I.

*Knowingly.* Evidence should if possible be given that the accused knew the person harboured or protected to be an enemy; but if the fact of the harbouring or protecting is proved, the court may infer knowledge from the circumstances. The same observation applies to "voluntarily" in (5) and to "knowingly" in (6). See note to Rule 60 (A). ss. 4-5.

Paragraph (6). For definition of active service, see s. 189 (1).

Paragraph (7). This paragraph is confined to acts, words, neglect, or omissions which show cowardice, and the charge must be framed accordingly. Drunkenness or treachery (unaccompanied by cowardice) cannot be dealt with under this paragraph.

*Misbehaves.* This means that the accused, from an unsoldierlike regard for his personal safety in the presence of the enemy, failed in respect of some distinct and feasible duty imposed upon him by a specified order or regulation, or by the well-understood custom of the service, or by the requirements of the case, as applicable to the position in which he was placed at the time.

5. Every person subject to military law who on active service commits any of the following offences; that is to say, Offences in relation to the enemy not punishable with death.

- (1.) Without orders from his superior officer leaves the ranks, in order to secure prisoners or horses, or on pretence of taking wounded men to the rear; or
  - (2.) Without orders from his superior officer wilfully destroys or damages any property; or
  - (3.) Is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner fails to rejoin His Majesty's service when able to rejoin the same; or
  - (4.) Without due authority either holds correspondence with, or gives intelligence to, or sends a flag of truce to the enemy; or
  - (5.) By word of mouth or in writing, or by signals, or otherwise, spreads reports calculated to create unnecessary alarm or despondency; or
  - (6.) In action, or previously to going into action, uses words calculated to create alarm or despondency,
- shall on conviction by court-martial be liable to suffer penal servitude, or such less punishment as is in this Act mentioned.

#### NOTE.

Paragraph (4). *Without due authority.* If *prima facie* a want of authority is shown, it will rest with the accused to show that he had authority, but any evidence of his having had authority which is known to the prosecutor should be adduced by the prosecutor. See rule 60 (A) and note. The terms of this paragraph include any unauthorised communication of intelligence to the enemy even by indirect methods, such as sending letters or sketches, or plauss, to friends or newspapers. As to injurious disclosures not on active service, see s. 36.

Every one present with an army should bear in mind that the publication of letters from the army containing facts and opinions, often entirely erroneous,

Part I.  
ss. 5-6.

relating to the operations or prospects of the campaign, can scarcely fail to have mischievous results; and it is well known that both during the Peninsular and Crimean wars, the enemy were indebted for information to English newspapers. See G.O. of Duke of Wellington, dated Celorico, 10 Aug., 1810, quoted in Simmons on Courts-Martial p. 67.

Paragraph (5). The charge must detail the reports alleged to have been spread, and should indicate how they were calculated to create unnecessary alarm or despondency. A similar remark applies to a charge under paragraph (6). It is not necessary to aver or prove that the reports were false,—indeed the truth may increase the offence;—nor is it necessary to show that any effect was actually produced by the reports spread or words used: it could, however, seldom be expedient to try an officer or soldier under this section for expressions which could not be shown to have had some effect. The offence under paragraph (5) may be committed either with reference to the troops with whom the offender is serving, or with reference to the inhabitants of the country.

Offences  
punishable  
more  
severely on  
active  
service than  
at other  
times.

6. (1.) Every person subject to military law who commits any of the following offences, that is to say,

- (a.) Leaves his commanding officer to go in search of plunder; or
- (b.) Without orders from his superior officer, leaves his guard, picquet, patrol, or post; or
- (c.) Forces a safeguard; or
- (d.) Forces or strikes a soldier when acting as sentinel; or
- (e.) Impedes the provost-marshal, or any assistant provost-marshal, or any officer or non-commissioned officer, or other person legally exercising authority under or on behalf of the provost-marshal, or, when called on, refuses to assist in the execution of his duty the provost-marshal, assistant provost-marshal, or any such officer, non-commissioned officer, or other person; or
- (f.) Does violence to any person bringing provisions or supplies to the forces; or commits any offence against the property or person of any inhabitant of or resident in the country in which he is serving; or
- (g.) Breaks into any house or other place in search of plunder; or
- (h.) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, intentionally occasions false alarms in action, on the march, in the field, or elsewhere; or
- (i.) Treacherously makes known the parole, watchword, or countersign, to any person not entitled to receive it, or treacherously gives a parole, watchword, or countersign different from what he received; or
- (j.) Irregularly detains or appropriates to his own corps, battalion, or detachment any provisions or supplies proceeding to the forces, contrary to any orders issued in that respect; or

(k.) Being a soldier acting as sentinel, commits any of the following offences; that is to say,

(i) sleeps or is drunk on his post; or

(ii) leaves his post before he is regularly relieved,

shall, on conviction by court-martial,

if he commits any such offence on active service, be liable to suffer death, or such less punishment as is in this Act mentioned; and

if he commits any such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

(2.) Every person subject to military law who commits any of the following offences; (that is to say),

(a.) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, negligently occasions false alarms in action, on the march, in the field, or elsewhere; or

(b.) Makes known the parole, watchword, or countersign to any person not entitled to receive it; or, without good and sufficient cause, gives a parole, watchword or countersign different from what he received,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment or such less punishment as is in this Act mentioned.

#### NOTE.

Sub-section (1). The punishment for the offences here mentioned varies very widely according as the offences are committed on active service or not on active service; and where a man is charged with committing any of them on active service, those words must always be inserted in the charge. For the definition of active service, see section 189 (1).

(a.) This paragraph, having regard to the special military significance of the term "plunder," is applicable only to offences committed on active service.

(b.) *Post*. As used with respect to an individual this word refers to the position or place in which it may be the duty of an officer or soldier to be, especially when under arms: and with respect in particular to a sentry, it applies to the spot where the sentry is left to the observance of his duties by the officer or non-commissioned officer posting him; or to any limits specially pointed out as his walk. In determining what, in any particular case, is a post, the court will use their military knowledge. See note to (k) below.

The place in which the person was posted is material and should be stated in the charge.

(c.) *Safeguard*. A safeguard is a party of soldiers detached for the protection of some person or persons, or of a particular village, mansion, or other property. A single sentry posted from such party is still part of the safe-

Part I. guard, and it is as criminal to force him by breaking into the house, cellar,  
 — or other property under his especial care as to force the whole party.  
 s. 6.

(e.) The court may exercise their military knowledge as to whether a person was a provost-marshal, assistant provost-marshal or a person legally exercising authority under or on behalf of the provost-marshal: but it will be open to the accused to show that the person he is charged with impeding was not properly appointed provost-marshal or assistant provost-marshal, or was not legally exercising the above-mentioned authority.

(f.) It is frequently of the highest importance to conciliate the inhabitants of the country where the troops happen to be, and to induce them to bring provisions and supplies. From this point of view an offence which in other circumstances would be trivial, may require exemplary punishment. For instance, if a trifling theft has the effect of disturbing the confidence of the inhabitants and endangering the supplies of the army, the offence deserves very severe punishment. As an offence under the paragraph will really be a civil offence when not committed on active service, a person should not be charged under this paragraph when the offence is committed in the United Kingdom or in any other place where there is a civil court competent conveniently to deal with the case (see Ch. VII, para. 3). On the other hand, on active service, offences which, if committed in the United Kingdom, would be tried by a civil court, may be better tried under this enactment. For instance, a sutler accused of rape committed on an inhabitant of the country might properly be tried under it. The charge must set out the specific acts of violence or the specific offence alleged to have been done or committed.

(g.) The house or other place should be specified in the charge.

*Plunder.* See above note to (a).

(h.) The charge must set out exactly the signal made or the words used. If means other than words are used they must be specified briefly in the particulars of the charges; and the same remark applies to the statement of the "elsewhere."

*Intentionally.* See note to s. 4 (4), as to "knowingly," and Ch. VII, para. 24.

(i.) Although treachery must be averred in a charge under this paragraph, and want of good and sufficient cause in a charge under sub-section 2 (b), the charge need not detail the circumstances of the treachery or of the absence of good and sufficient cause. Upon proof that the accused made known the watchword to a person not entitled to receive it, or gave a watchword different from what he received, the court will be at liberty to infer the treachery or the absence of good and sufficient cause, unless the accused can show that he acted from good cause and not treacherously. The charge must aver or show that the person was not entitled to receive the watchword.

Watchword will include any authorised pass-word not being parole or countersign which might, for example, be adopted for a particular emergency.

(j.) The charge must show how the act charged was irregular and contrary to orders.

(k.) *Post.* See note to (b) above. The fact of a sentry not being regularly posted is immaterial. A soldier is liable, if, being one of the guard or body furnishing the sentry for the post, he has undertaken the duty of sentry, even though not posted in the regular way by a non-commissioned officer. A sentry found drunk a short distance from his post should be charged with leaving his post: he cannot properly be charged with being drunk on his post, though he may be charged with drunkenness on duty. As to "stablemen," see K.R., para. 560.

Sub-section (2). (a.) See note to (1) (h) above. This paragraph applies only to false alarms among the troops occasioned negligently.

(b.) See note to (1) (i) above.

### *Mutiny and Insubordination.*

7. Every person subject to military law who commits any of the following offences ; that is to say, Mutiny and  
sedition.

- (1.) Causes or conspires with any other persons to cause any mutiny or sedition in any forces belonging to His Majesty's regular, reserve, or auxiliary forces, or Navy ; or
- (2.) Endeavours to seduce any person in His Majesty's regular, reserve, or auxiliary forces, or Navy, from allegiance to His Majesty, or to persuade any person in His Majesty's regular, reserve, or auxiliary forces, or Navy, to join in any mutiny or sedition ; or
- (3.) Joins in, or, being present, does not use his utmost endeavours to suppress, any mutiny or sedition in any forces belonging to His Majesty's regular, reserve, or auxiliary forces, or Navy ; or
- (4.) Coming to the knowledge of any actual or intended mutiny or sedition in any forces belonging to His Majesty's regular, reserve, or auxiliary forces, or Navy, does not without delay inform his commanding officer of the same,

shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned.

#### NOTE.

Paragraph (1). *Mutiny or sedition.* See as to these offences, Ch. III, paras. 4-6. A man might be tried under this paragraph for conspiring to cause a mutiny though the conspiracy proved abortive, and no mutiny took place.

Paragraph (2). Civilians who endeavour to seduce any person serving in His Majesty's forces by sea or land from allegiance to His Majesty, or to incite any such person to commit any traitorous practice whatsoever, are liable on conviction by a civil court to penal servitude for life under 37 Geo. III, c. 70, as amended by 7 Will. IV and 1 Vict. c. 91.

Paragraph (3). *Being present.* Doubts might well arise whether men present when a mutiny was being contrived or had actually begun were actually joining it or not. This paragraph provides that if they are present and do not use their utmost endeavours to suppress it, they will be equally guilty as if they took that active part which constitutes joining in a mutiny. Consequently, men present on parade, or present accidentally, or induced by false pretences to attend a meeting, where a mutiny is begun or contrived, will be guilty of an offence under this paragraph although they took no active part, and therefore can hardly be said to have joined in the mutiny. If a doubt exists as to whether any individual did or did not take such an active part as to have joined in the mutiny, he may be charged in alternative charges under paragraph (1) and this paragraph.

Each one of a body of men not marching, or not coming from their barrack room when duly ordered, is guilty of mutiny, if he cannot show that his disobedience was occasioned solely by reason of compulsion.



Part I. *Utmost endeavours.* This does not necessarily mean the utmost of which a man is capable, but such endeavours as a man might be reasonably and fairly expected to make.

ss. 7-8.

Paragraph (4). *Commanding officer.* This expression will include any person having a military command over the person who has knowledge of the mutiny or sedition, and is not limited by Rule 129. A private soldier, for example, would properly inform his serjeant, and information so given would be held to be given to his commanding officer within the meaning of the section.

Striking or threatening superior officer.

8. (1.) Every person subject to military law who commits any of the following offences ; that is to say,

Strikes or uses or offers any violence to his superior officer, being in the execution of his office,

shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned ; and

(2.) Every person subject to military law who commits any of the following offences ; that is to say,

Strikes or uses or offers any violence to his superior officer, or uses threatening or insubordinate language to his superior officer,

shall on conviction by court-martial,

if he commits such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned ; and

if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

#### NOTE.

Sub-section (1). *In the execution of his office.* It is difficult accurately to define these words, but the military knowledge and experience of the members of a court-martial will enable them in most instances readily to determine whether the superior is or is not in the execution of his office. An officer in plain clothes may undoubtedly be in the execution of his office ; but where the officer is in plain clothes, it becomes necessary to prove some knowledge on the part of the soldier at the time of offering the violence that the person assaulted was an officer, which is not the case where the officer is in uniform. On the other hand, there may be circumstances in which an officer in uniform is not in the execution of his office. A corporal asleep in the barrack room of which he was in charge would probably be held to be within the protection of this section.

An officer or non-commissioned officer in quarters is in the execution of his office.

A serjeant out of barracks ordering a disorderly soldier to return to barracks is in the execution of his office.

*Offers any violence.* These words include any defiant gesture or act which if completed would end in actual violence, but do not extend to an insulting or impertinent gesture or act from which violence could not result. For example, a soldier throwing down his arms or his accoutrements on parade, or throwing



away his cap or belt in an impertinent manner, but in such a direction that they could not strike a superior, could not be deemed to offer violence within the meaning of this enactment. So also a man shaking his fist, or even drawing a bayonet, or otherwise making a show of violence against a superior, behind the bars of a cell or at such a distance that striking him was at the moment impossible, is not guilty of offering violence. On the other hand, throwing a missile, or pointing a loaded firearm at a superior would come within the section.

If the violence be used in self-defence, for instance, if it be shown that it was necessary, or that at the moment the accused had reason to believe it was necessary for his actual protection from injury, and that he used no more violence than was reasonably necessary for this purpose, he is legally justified in using it, and commits no offence.

Provocation is not a ground of acquittal, but tends to mitigate the punishment; evidence of provocation, if tendered, must therefore be admitted in order to render the sentence valid.

Sub-section (2). *Threatening or insubordinate language.* Where the charge is for threatening or insubordinate language the particulars of the charge must state the expressions or their substance, and the superior to whom they were addressed.

Expressions used merely for exculpation would not be punishable under this section. It has been ruled that "expressions, however offensive to a superior, that are used (1) in the course of a judicial inquiry, (2) by a party to that inquiry, and (3) upon a matter pertinent to and *bonâ fide* for the purposes of that inquiry as, for instance, the credibility of a witness, are privileged, and cannot be made the subject of a criminal charge."

Expressions used of a superior officer and not within his hearing, or which cannot be proved to be used to a superior officer, must be charged as an offence under s. 40, and not under this section. But insubordinate or threatening language regarding one superior if used to (in the sense that it should be heard by) another superior is an offence under this section.

The words must be used with an insubordinate intent, that is to say, they must be, either in themselves, or in the manner or circumstances in which they are spoken, insulting or disrespectful, and in all cases it must reasonably appear that they were intended to be heard by a superior.

As to the use of coarse and abusive language by a man when drunk, see Ch. III, paras. 30, 31; and for general observations on insubordinate language, see Ch. V, para. 86.

Improper language which does not amount to insubordinate language, or which cannot be proved to be used to a superior officer, must be charged under s. 40.

As to active service, see the beginning of note to section 6.

*Superior officer.* The court should be satisfied, before conviction, that the accused knew the person struck to be a superior officer. If the superior did not wear the insignia of his rank, and was not personally known to the accused, evidence would be necessary to show that the accused was otherwise aware of his being of superior rank, the intention being of the essence of the offence.

A charge alleging that the accused "attempted to strike" or "struck at" a superior officer, though objectionable as not following the words of the Act, has been held good.

The expression "superior officer" in this section means not only a superior in rank as defined by s. 190 (7), but also a senior in the same grade where that seniority gives power of command according to the usages of the service; but one private soldier can never be the "superior officer" of another.

Part I.  
ss. 8-9.

A military policeman is not, as such, the superior officer of a private soldier.

See generally as to offences against superiors, K.R., para. 554.

Disobedience to superior officer.

9. (1.) Every person subject to military law who commits the following offence ; that is to say,

Disobeys, in such manner as to show a wilful defiance of authority, any lawful command given personally by his superior officer in the execution of his office, whether the same is given orally, or in writing, or by signal, or otherwise,

shall on conviction by court-martial be liable to suffer death or such less punishment as is in this Act mentioned ; and

(2.) Every person subject to military law who commits the following offence ; that is to say,

Disobeys any lawful command given by his superior officer, shall, on conviction by court-martial,

if he commits such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned ; and

if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

#### NOTE.

Sub-section (1). *Disobeys in such manner . . . any lawful command.* A charge under this sub-section would, as a rule, be reserved for trial by a general court-martial. The charge must specify the command, and that it was given personally, and must show the manner in which the disobedience showed a wilful defiance of authority ; see Ch. III, paras. 8-10. The particulars should also show how the officer was in the execution of his office (see note to s. 8), but the court may make use of their military knowledge for determining whether the officer was in the execution of his office, and whether he was a superior officer who by virtue of his office was authorised to give such a command.

The command must be one relating to military duty, that is to say, the disobedience of it must tend to impede, delay, or prevent a military proceeding. Thus a command given by an officer to his soldier-servant to perform some domestic office not relating to military duty is not a command within the meaning of this section. A soldier who refuses to take a letter relating to private theatricals upon the order of a non-commissioned officer does not disobey a lawful command.

Religious scruples furnish no excuse for disobedience.

The disobedience must be immediate or proximate to the command, and actual non-compliance must be proved. A man who says "I will not do it," does not necessarily disobey. A man who when ordered to do a duty at a future time says "I will not do it," does not thereby commit an offence under this section, though he may be liable under s. 8 (2). See Ch. III, para. 9.

Sub-section (2). *Disobeying lawful command.* To establish an offence under

this sub-section, it is not requisite to prove that the command was given personally by a superior. It is sufficient to show that it was given by the deputy or agent of a superior, whom, according to the usages of the service or otherwise, the accused might reasonably suppose to have been duly authorised to notify to him the command of his superior. But it must be a specific command to an individual, and must be given as being the command of a superior who by virtue of his office or otherwise was authorised to give such a command.

An omission arising from misapprehension or forgetfulness is not an offence under this section. The act of a soldier who declines to sign his accounts upon the ground that they are incorrect is not an offence under this section.

If obedience to the command were physically impossible, the failure to obey would not be an offence under this section.

1 For the meaning of the expression "superior officer," see note to s. 8.

As to active service, see Ch. III, para. 33, and note to s. 6.

As to disobedience of general or garrison orders, see s. 11.

10. Every person subject to military law who commits any of the following offences; that is to say, Part I.  
ss. 9-10.  
Insubordination.

- (1.) Being concerned in any quarrel, fray, or disorder, refuses to obey any officer (though of inferior rank) who orders him into arrest, or strikes, or uses or offers violence to, any such officer; or
- (2.) Strikes, or uses or offers violence, to any persons, whether subject to military law or not, in whose custody he is placed, and whether he is or is not his superior officer; or
- (3.) Resists an escort whose duty it is to apprehend him or to have him in charge; or
- (4.) Being a soldier breaks out of barracks, camp, or quarters,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment or such less punishment as is in this Act mentioned.

Paragraph (1). A person may be charged under this paragraph whether the officer who ordered him into arrest was of inferior or superior rank, but where the officer was of superior rank, the offender may be charged also under s. 9. Only officers should be charged under this paragraph.

Paragraph (2). It will be observed that a charge may be made under this paragraph for assaulting a civilian policeman.

Paragraph (3). The court will use their military knowledge to determine whether it was the duty of the escort to apprehend the accused or to have him in charge.

Under this paragraph the resistance may be passive. A man lying down and refusing to move, if physically able to move, resists.

Paragraph (4). *Breaks out of barracks, &c.* This offence consists in a soldier quitting barracks, &c., at a time when he had no right to do so, either because he was on duty or under punishment, or because of some regulation or order; and it is immaterial whether the offence was managed by violence, stratagem, disguise, or simply by walking past a sentry unnoticed. The mode in which the act was effected will, however, assist a commanding officer in determining whether to deal with it as a mere breach of discipline under this

Part I. paragraph, or to reserve it for trial as amounting to desertion. The particulars of the charge must show that the absence from barracks, &c., was without permission, or otherwise unlawful.

s. 10-12.

If the charge be for breaking out of barracks, it must be proved that the accused left the confines of the barracks as charged, and so also if the charge is for breaking out of camp. A charge of breaking out of quarters would hold good in the case of a man improperly leaving one part of a barrack for another where he had no right to be.

Neglect to obey garrison or other orders.

11. Every person subject to military law who commits the following offence ; that is to say,

Neglects to obey any general or garrison or other orders, shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and, if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Provided that the expression "general orders" in this section shall not include His Majesty's regulations and orders for the army, or any similar order in the nature of a regulation published for the general information and guidance of the army.

#### NOTE.

The orders specified in this section are standing orders or orders having a continuous operation, whether garrison or regimental, or of a like nature. Disobedience of a specific order in the nature of a command should be dealt with under s. 9, and non-compliance, through forgetfulness or negligence, with an order to do some specific act at a future time under s. 40.

Ignorance of the order is not an exculpation if the order is one which the accused ought in the ordinary course to know. But a misapprehension reasonably arising from want of clearness in the order is a ground for exculpation. The existence of the orders and the fact of the neglect must be proved. Disobedience of a K.R. may be punished under s. 40, but if a K.R. is published as a regimental order, it acquires also the character of a regimental order, and disobedience to it may be punished accordingly.

The offence of concealment of venereal disease is to be dealt with under this section. K.R. para. 462.

#### *Desertion, Fraudulent Enlistment, and Absence without Leave.*

Desertion.

12. (1.) Every person subject to military law who commits any of the following offences ; that is to say

(a.) Deserts or attempts to desert His Majesty's service ; or

(b.) Persuades, endeavours to persuade, procures or attempts to procure any person subject to military law to desert from His Majesty's service,

shall, on conviction by court-martial,

if he committed such offence when on active service or under orders for active service, be liable to suffer death, or such less punishment as is in this Act mentioned ; and

if he committed such offence under any other circumstances, be liable for the first offence to suffer imprisonment, or such less



punishment as is in this Act mentioned : and for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned.

(2.) Where an offender has fraudulently enlisted once or oftener he may, for the purposes of trial for the offence of deserting or attempting to desert His Majesty's service, be deemed to belong to any one or more of the corps to which he has been appointed or transferred as well as to the corps to which he properly belongs ; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly ; and further, it shall be lawful, on conviction of a person for two or more such offences, to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences.

(3.) For the purposes of the liability under this section to the higher punishment for a second offence, a previous offence of fraudulent enlistment may be reckoned as a previous offence under this section.

## NOTE.

See Ch. III, paras. 13-20 ; K.R., paras. 514-546.

*On active service.* See beginning of note to s. 6.

The offence of fraudulent enlistment is dealt with in s. 13. As to a false statement by a soldier to his commanding officer that he has been guilty of desertion or fraudulent enlistment, see s. 27 (3).

For provisions as to inquiry into absence and confession of desertion or fraudulent enlistment, see ss. 72, 73 ; and as to liability to general service or transfer on conviction for, or confession of, desertion or fraudulent enlistment, see s. 83 (7) ; and as to liability to transfer of soldier delivered into military custody or committed by a court of summary jurisdiction as a deserter, see s. 83 (8) ; and as to descriptive reports of deserters, escorts, and generally, K.R., paras. 514-546.

A person charged with desertion may be found guilty of attempting to desert, or of being absent without leave, and a person charged with attempting to desert may be found guilty of desertion, or being absent without leave : s. 56 (3) (4).

If the accused is put on his trial for two offences of desertion, or for fraudulent enlistment and desertion, and it is desired that the higher punishment allowed for a second offence should be awarded, the charges must be on separate charge sheets, and the trials distinct, though they may be held before the same court. To enable the punishment of penal servitude to be awarded, the court must, of course, be a general court-martial. In other cases the general principles as to what may and what may not be included in the same charge sheet, laid down in the note to Rule 62 (A), will apply to the offences of desertion and fraudulent enlistment equally as to other offences.

The case is similar where the charge is for fraudulent enlistment under s. 13 ; but in that case, if he has deserted first, and fraudulently enlisted afterwards, he cannot be awarded the higher punishment unless he has served between the date of the desertion and the date of the fraudulent enlistment. See s. 13 (2) (3).

For example, if a soldier deserted on the 1st of October, 1904, and was apprehended, convicted, and punished, and after undergoing his punishment

**Part I.** returns to the ranks, and on the 10th of March, 1907, fraudulently enlists, then, on conviction for such fraudulent enlistment, he can be sentenced to penal servitude, just as if the former conviction for desertion had been a conviction for fraudulent enlistment.

**ss. 12-13.**

If, however, a soldier thus deserts on the 5th of January, 1907, and is not apprehended, and on the 15th of February, while still in a state of desertion, fraudulently enlists, then, although he may be convicted both of the desertion and of the fraudulent enlistment, he cannot be sentenced to penal servitude for the fraudulent enlistment, as the desertion was his absence "next before the fraudulent enlistment," and the exception in s. 13 (3) applies.

Where the desertion and fraudulent enlistment form in effect one transaction, the man should not as a rule be tried for both offences.

Any person who falsely represents himself to any authority to be a deserter may be punished by a civil court of summary jurisdiction by three months' imprisonment (s. 152); see also as to punishment by a like court of persons inducing soldiers to desert, s. 153; and as to the apprehension of deserters, s. 154.

To establish desertion it is necessary to prove some circumstance justifying the inference that the accused intended not to return to military duty in any corps, or intended to avoid some important particular service, such as active service, embarkation for foreign service, or service in aid of the civil power.

*Attempt to desert.*—To establish an attempt to desert, some act which, if completed, would constitute desertion, as above mentioned, must be proved. A mere intention to desert does not amount to an attempt to desert.

**Fraudulent enlistment.**

**13. (1.)** Every person subject to military law who commits any of the following offences; that is to say,

(a.) When belonging to either the regular forces, or the militia or Territorial Force when embodied, or the yeomanry when called out for actual military service, without having obtained a regular discharge therefrom, or otherwise fulfilled the conditions enabling him to enlist or enrol, enlists or enrolls himself in His Majesty's regular forces, or in any force raised in India or a colony, or

(b.) When belonging to the regular forces without having fulfilled the conditions enabling him to enlist, enrol, or enter, enrolls himself, or enlists in the militia or Territorial Force, or in any of the reserve forces, not subject to military law, or enters the Royal Navy,

shall be deemed to have been guilty of fraudulent enlistment, and shall on conviction by court-martial be liable—

(i.) for the first offence to suffer imprisonment, or such less punishment as is in this Act mentioned; and

(ii.) for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned.

(2.) When an offender has fraudulently enlisted on several occasions he may, for the purposes of this section, be deemed to belong to any one or more of the corps to which he has been



appointed or transferred, as well as to the corps to which he properly belongs; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly; and further, it shall be lawful, on conviction of a person for two or more such offences, to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences.

(3.) Where an offender is convicted of the offence of fraudulent enlistment, then, for the purposes of his liability under this section to the higher punishment for a second offence, the offence of deserting, or attempting to desert, His Majesty's service, may be reckoned as a previous offence of fraudulent enlistment under this section, with this exception, that the absence of the offender next before any fraudulent enlistment shall not, upon his conviction for that fraudulent enlistment, be reckoned as a previous offence of deserting or attempting to desert.

NOTE.

The charge must specify the force to which the accused belonged at the time of his enlistment. A militiaman enlisting when the militia is not embodied, or a yeoman enlisting when the yeomanry have not been called out for actual military service, cannot be charged under this section, though he may be charged under s. 33 for making a false answer. See also as to militiamen and yeomen, 45 & 46 Vict. c. 49, s. 26, K.R. paras. 529-531.

Sub-section (1) (a) has been amended by the Army (Annual) Act, 1906, so as to cover the case of fraudulent enlistment into any Indian or Colonial force.

Sub-section (1) (b) covers the case of a soldier who enters the Royal Navy, but not of a sailor who enlists in the army. The latter case can be dealt with under s. 33.

Where a soldier is charged with fraudulent enlistment, by reason of which he has obtained a free kit, the receipt of that free kit must be mentioned in the charge and proved in evidence in order to enable the court to sentence him to a deduction from his pay as compensation for the free kit, but the charge of fraudulently obtaining a free kit cannot by itself be maintained; see K.R., para. 561, and Rules, First Appendix, Note as to use of Forms of Charges (23), p. 532.

Where the fraudulent enlistment has taken place more than three years before the trial, the obtaining of a free kit should not be mentioned in the charge, as a sentence of stoppages based upon that circumstance is illegal.

A copy or duplicate of the attestation paper is proof of the enlistment, and the issue of a free kit may be proved by a copy of a record thereof in the regimental books (s. 163 (1), (g) and (h)).

Sub-section (3). As to conviction for two offences, and the punishment for the second offence, see note to s. 12.

**14.** Every person subject to military law who commits any of the following offences; that is to say,

(1.) Assists any person subject to military law to desert His Majesty's service; or

(2.) Being cognisant of any desertion or intended desertion of a

Assistance  
of or con-  
vivialance at  
desertion.

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person subject to military law, does not forthwith give notice to his commanding officer, or take any steps in his power to cause the deserter, or intending deserter, to be apprehended,

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

#### NOTE.

Paragraph (1). It must be proved that the accused knew that the assistance given by him was for the purpose of the desertion.

Paragraph (2). *Does not forthwith give notice.* The time at which the accused became cognisant of the desertion, and, if he gave notice to his commanding officer, the time at which he gave notice, are material and should be specified in the charge.

*Commanding officer.* This includes any person having military command over the accused. The court may use their military knowledge in determining whether the person is for this purpose a commanding officer or not. See note to s. 7 (4).

If the charge is under the latter part of (2), the charge must allege the steps which it was in the power of the accused to take in order to cause the deserter, or intending deserter, to be apprehended.

Absence  
from duty  
without  
leave.

15. Every person subject to military law who commits any of the following offences : that is to say,

- (1.) Absents himself without leave ; or
- (2.) Fails to appear at the place of parade or rendezvous appointed by his commanding officer, or goes from thence without leave before he is relieved, or without urgent necessity quits the ranks ; or
- (3.) Being a soldier, when in camp or garrison, or elsewhere, is found beyond any limits fixed or in any place prohibited by, any general, garrison, or other order, without a pass or written leave from his commanding officer ; or
- (4.) Being a soldier, without leave from his commanding officer, or without due cause, absents himself from any school when duly ordered to attend there,

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

#### NOTE.

Paragraph (1). *Absents himself.* See Ch. III, paras. 13-19 ; and for the power of summary award of detention by the commanding officer see s. 46 (4) (5).

In charges under this section, if the absence or failure to appear or other act is proved, it will lie on the accused to show that he had leave or was under urgent necessity and had due cause for the absence, failure, or other act. A soldier tried for desertion or attempted desertion may, under s. 56, be found guilty of absence without leave. When a soldier has been absent without leave for 21 clear days a court of inquiry will be assembled : s. 72.

The absence must be from military supervision, *i.e.*, the place where it is the soldier's duty to be, and where he can be found if wanted. Usually it must be absence from his barrack, camp, or station, but if his duty is to be in one part of the barrack, or he cannot be found when wanted, his absence from a part only of the barrack may amount to absence without leave.

If the hour of his absence is material for the purpose of proving a day's absence (see s. 138 and note, and s. 140), the hours of his departure and return must be stated in the particulars.

Involuntary absence, caused, for example, by disability through being ill or being kept in custody by the civil power, even though arising from the wrongful act of the accused, is not an offence under this section.

Where the absence was originally voluntary and subsequently becomes involuntary the length of the absence without leave must be reckoned only to the time when the absence becomes involuntary.

Under paragraph (2) the particular parade should be specified, so that the accused may be able to show, if he can, that he was not by order or custom, or for other reasons, bound to attend that parade.

Under paragraph (3) ignorance of the order, though it would properly tend to mitigate the punishment, does not entirely exculpate the accused. But misapprehension reasonably arising from want of clearness in the order may be a ground of exculpation.

A man absent without leave is not also liable to trial for failing to attend parades, &c., during the period of his absence, and if he is tried on alternative charges for both offences, he can be convicted only upon one of the charges.

Paragraphs (3) and (4). *Commanding officer.* Any officer having military command over the accused and authority to grant leave will be commanding officer within these paragraphs. This matter can therefore be determined by the military knowledge of the court.

### *Disgraceful Conduct.*

16. Every officer who, being subject to military law, commits the following offence; that is to say,

Scandalous  
conduct of  
officer.

behaves in a scandalous manner, unbecoming the character of an officer and a gentleman,  
shall on conviction by court-martial be cashiered.

#### NOTE.

An act or neglect which amounts to any of the offences specified in the Act or which is to the prejudice of good order and military discipline, ought not, as a rule, to be tried under this section. Scandalous conduct may be either of a military or social character. But a charge of a social character is not to be preferred under this section, unless it is of so grave a nature as to render the officer unfit to remain in the service, and therefore is scandalous in respect of his military character. Social misconduct which is not so grave as to bring scandal on the service, should not be made a ground of charge against an officer, but may well form the subject of reproof and advice on the part of his commanding officer or some other superior officer.

It will be noticed that there is no power to award any other punishment than cashiering on conviction for this offence.

17. Every person subject to military law who commits any of the following offences; that is to say,

Fraud by  
persons in  
charge of  
moneys or  
goods.

Being charged with or concerned in the care or distribution of any public or regimental money or goods, steals, fraudulently

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misapplies, or embezzles the same, or is concerned in or connives at the stealing, fraudulent misapplication, or embezzlement thereof, or wilfully damages any such goods, shall on conviction by court-martial be liable to suffer penal servitude, or such less punishment as is in this Act mentioned.

#### NOTE.

The distinction between stealing and the other offences is roughly this—that a man is not said to steal a thing if, previously to the time at which he converted it to his own use, he was lawfully in possession of it. See Ch. VII, paras. 56, 57, 58.

This section does not apply to ordinary thefts, which are dealt with in s. 18 (4), but to those more serious offences committed by persons in a position of trust in relation to public or regimental property, where placed under their charge. The severe punishment of penal servitude can therefore be given. Under s. 56 a person charged with stealing may be found guilty of embezzlement or of fraudulent misapplication; and a person charged with embezzlement may be found guilty of stealing or of fraudulent misapplication.

If the charge is for fraudulent misapplication or embezzlement it must allege that the property was improperly applied for the use of the accused himself or some person connected with him, and not for a public purpose.

If no evidence is forthcoming as to the particular mode of misapplication, the court may, in the absence of explanation from the accused, infer that the property was misapplied from the fact of its not having been properly applied. See Ch. VII, para. 59.

Each instance of embezzlement should be in a separate charge. See p. 543, Note.

A mere error or irregularity in accounts, or a mistaken misapplication of money or goods, does not constitute an offence under this section. There must be an intent to defraud on the part of the accused, either for the benefit of himself or somebody else; and this must be particularly recollected in the case, for example, of a non-commissioned officer's accounts getting into confusion, through the neglect or carelessness of superiors.

The charge must show in detail that the accused was charged with or concerned in the care or distribution of the money or goods which are alleged to have been fraudulently misapplied or embezzled, but the court may use their military knowledge to determine that the accused, if holding a particular office, was, by virtue of his office, so charged or concerned. A soldier posted as sentry over a place containing public property, would not be "charged with" the care of the property within the meaning of this section.

The expression "charged with" means officially charged with, that is to say, in virtue of the public office the accused formally holds. A corporal or private entrusted by a pay-serjeant for his own convenience with public money would not fall under this section, although he might be convicted under s. 18.

As to court of inquiry on discovery of loss of stores, &c., see K.R., paras. 668, 669.

Disgraceful  
conduct of  
soldier.

18. Every soldier who commits any of the following offences; that is to say,

- (1.) Malingers, or feigns or produces disease or infirmity; or
- (2.) Wilfully maims or injures himself or any other soldier, whether at the instance of such other soldier or not, with

intent thereby to render himself or such other soldier unfit for service, or causes himself to be maimed or injured by any person, with intent thereby to render himself unfit for service ; or

(3.) Is wilfully guilty of any misconduct, or wilfully disobeys, whether in hospital or otherwise, any orders, by means of which misconduct or disobedience he produces or aggravates disease or infirmity, or delays its cure ; or

(4.) Steals or embezzles or receives, knowing them to be stolen or embezzled, any money or goods the property of a comrade or of an officer, or any money or goods belonging to any regimental mess or band, or to any regimental institution, or any public money or goods ; or

(5.) Is guilty of any other offence of a fraudulent nature not before in this Act particularly specified, or of any other disgraceful conduct of a cruel, indecent, or unnatural kind, shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

#### NOTE.

A soldier convicted of an offence under this section forfeits all good conduct badges, and is placed in the same position as regards earning badges as a recruit. Pay Warrant, 1907, article 1023.

Paragraphs (1)–(3). The charge should show in what way a soldier has malingered, or what disease or infirmity he has feigned or produced, or what particular injury has been committed, or of what misconduct or wilful disobedience he has been guilty. In a case under paragraph (2) evidence will have to be given of the intent, but if the act is shown to have been done wilfully and not accidentally, the intent may be presumed.

*Feigning.* This term means not merely that a soldier reported himself sick when he was not sick, but that he reported himself sick when he *knew* that he was not sick, and that he feigned or pretended certain symptoms which the medical officer was satisfied did not exist.

*Malingering* is a feigning of disease, but of a more serious nature ; implying some deceit, such as the previous application of a ligature, or of the taking of some drug, or some other act which, though it did not actually produce disease or retard a cure, yet produced the appearance of the disease said to exist.

The misconduct under paragraph (3) must be with the intent of producing or aggravating the disease, or delaying the cure, as the case may be. The involuntary production, aggravation, or prolongation of *delirium tremens* by intemperate habits, or of venereal disease by immoral conduct, does not render a soldier liable under this paragraph.

Paragraph (4). See note on s. 17.

It is not material to whom the property belongs, provided it is shown to belong to a comrade, officer, regimental mess, regimental band, or regimental institution. If it turns out that the property belongs to some person or persons not included in the above description, the accused must be acquitted, as the offence could in that case only be charged under s. 41.

If a man steals the uniform coat of his comrade, he can be charged with stealing it either as being public property or as being the property of his comrade ; for although the coat is public property, yet the comrade has posses-



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ss. 18-19. In charges under this paragraph, the value of articles in respect of which the offender should be sentenced to stoppages must always be stated in the particulars of the charge: see Rule 11 (F) and note, and K.R., para. 563.

It has been ruled by the Judge-Advocate-General that a Branch of the Royal Army Temperance Association is not a regimental institution within the meaning of this paragraph.

Paragraph (5). A charge under this paragraph for anything that is an offence under any previous enactment of the Act will be bad.

*Of a fraudulent nature.* The particulars must show that there was fraud in the act with which the accused is charged, amounting to a crime according to the ordinary criminal law; and any mere misappropriation of money or irregularity in accounts will not be sufficient to support a charge under this paragraph.

*Disgraceful conduct.* The charge must specify the details of the particular act or acts alleged to constitute the disgraceful conduct.

#### *Drunkenness.*

19. Every person subject to military law who commits the following offence; that is to say,

The offence of drunkenness, whether on duty or not on duty, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned, and, either in addition to, or in substitution for, any other punishment, to pay a fine not exceeding one pound.

#### NOTE.

If there is any doubt as to whether the offence was committed on duty or not on duty, it will be better to prefer a charge of simple "drunkenness"; the evidence as to the attendant circumstances will be a guide to the court in considering the sentence.

See also Ch. III, paras. 25-30, and s. 46 (2) (3), and note.

#### *Offences in relation to Persons in Custody.*

20. Every person subject to military law who commits any of the following offences; that is to say,

(1.) When in command of a guard, picket, patrol, or post, releases without proper authority, whether wilfully or otherwise, any person committed to his charge; or

(2.) Wilfully or without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to keep or guard,

shall on conviction by court-martial be liable if he has acted wilfully to suffer penal servitude, or such less punishment as is in this Act mentioned, and in any case to suffer imprisonment or such less punishment as is in this Act mentioned.

#### NOTE.

In a charge under paragraph (1), if proof is given that the person in custody was released, the accused must show the authority under which he acted. The court may use their military knowledge with respect to whether the authority alleged was or was not sufficient.

Drunken-  
ness.

Permitting  
escape of  
person in  
custody.



In a charge under paragraph (2), if there is a doubt as to the accused having acted *wilfully*, he should be charged with having acted *without reasonable excuse*, or he may be charged with having acted wilfully, and in an alternative charge with having acted without reasonable excuse. See s. 56 (5), and note.

Under paragraph (2), where an escort consisting of a corporal and a private lose the soldier in their charge, the corporal is liable to conviction unless he can prove that the escape took place in circumstances against which he could not reasonably guard. The private would be guilty, upon proof that he shared in the wilful act or negligence of the corporal, or that the soldier while committed to his charge during the temporary and necessary absence of the corporal was allowed to escape, unless he could show that he used all reasonable means to guard against the escape. In the latter case the corporal would not be guilty if he could show that his temporary delegation of his duty to the private was occasioned by some necessary cause, and that he took reasonable precautions for the safe custody of the soldier during his absence.

A man commits this offence wilfully by any act or omission, the reasonable and probable consequence of which would be the escape of the person committed to his charge, or whom it was his duty to guard or keep.

A man who, having completed a term of imprisonment or detention is being conducted from the prison or detention barrack to rejoin his regiment is not committed to the charge of the soldiers conducting him within the meaning of this section.

21. Every person subject to military law who commits any of the following offences; that is to say,

Irregular  
arrest or  
confinement.

(1.) Unnecessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation; or

(2.) Having committed a person to the custody of any officer, non-commissioned officer, provost-marshal, or assistant provost-marshal, fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within twenty-four hours thereafter, to the officer, non-commissioned officer, provost-marshal, or assistant provost-marshal, into whose custody the person is committed, an account in writing signed by himself of the offence with which the person so committed is charged; or

(3.) Being in command of a guard, does not, as soon as he is relieved from his guard or duty, or if he is not sooner relieved, within twenty-four hours after a person is committed to his charge, give in writing to the officer to whom he may be ordered to report that person's name and offence so far as known to him, and the name and rank of the officer or other person by whom he was charged, accompanied, if he has received the account above in this section mentioned, by that account,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

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## NOTE.

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The prosecutor will have to prove the facts which either show or enable the court to infer that the accused could have brought the person under arrest or in confinement to trial or brought his case before the proper authority for investigation. If these are proved it will lie on the accused to prove the necessity for keeping the person in question in custody.

See note to s. 45; and as to entry of charge in guard report, K.R., para. 485.

Escape from  
confinement.

**22.** Every person subject to military law who commits the following offence; that is to say,

Being in arrest or confinement, or in prison or otherwise in lawful custody, escapes, or attempts to escape, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

## NOTE.

As to arrest and confinement, see Ch. IV, paras. 1-17.

An escape may be either with or without force or artifice, and either with or without the consent of the custodian.

*Offences in relation to Property.*

Corrupt  
dealings in  
respect of  
supplies to  
forces.

**23.** Every person subject to military law who commits any of the following offences; that is to say,

- (1.) Connives at the exaction of any exorbitant price for a house or stall let to a sutler; or
- (2.) Lays any duty upon, or takes any fee or advantage in respect of, or is in any way interested in, the sale of provisions or merchandise brought into any garrison, camp, station, barrack, or place, in which he has any command or authority, or the sale or purchase of any provisions or stores for the use of any of His Majesty's forces,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

Deficiency  
in and  
injury to  
equipment.

**24.** Every soldier who commits any of the following offences; that is to say,

- (1.) Makes away with, or is concerned in making away with (whether by pawning, selling, destruction or otherwise howsoever) his arms, ammunition, equipments, instruments, clothing, regimental necessaries, or any horse of which he has charge; or
- (2.) Loses by neglect anything before in this section mentioned; or
- (3.) Makes away with (whether by pawning, selling, destruction, or otherwise howsoever) any military decoration granted to him; or
- (4.) Wilfully injures anything before in this section mentioned or

any property belonging to a comrade, or to an officer, or to any regimental mess or band, or to any regimental institution, or any public property ; or

(5.) Ill-treats any horse used in the public service, shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

For the purposes of this section, the expression "equipments" includes any article issued to a soldier for his use, or entrusted to his care for military purposes.

## NOTE.

As to a charge under this section, see K.R., paras. 562-566 ; Rules, First App. Note as to use of Forms of Charges, para. (23), p. 532 below. As to liability of civilian pawnbroker, &c., see s. 156.

Paragraph (1). This paragraph shows clearly that, whether arms are pawned, sold, destroyed, or otherwise made away with, the military offence is the same, namely, the making away with them ; but the degree of the offence may differ according as they have been pawned, sold, or destroyed, or otherwise made away with, and the punishment awarded may vary accordingly.

A charge under this or the next paragraph of making away with, &c., money or property not mentioned in these paragraphs would be bad, though if the act amounted to stealing or embezzlement it would be punishable under s. 18, or if there was proof of any wilful act or neglect, the soldier might be charged with an offence under s. 40.

*Making away with* is distinct from theft, as it applies only to goods in a man's own possession, and which, therefore, he cannot in law steal. Unless there is some positive act of pawning, sale, &c., a charge for making away with should not be preferred, but a charge of losing should be preferred under paragraph (2). See note to s. 17, and K.R., paras. 562, 563.

*Equipments*. The definition of this word at the end of the section will include such articles as blankets and barrack furniture.

*Clothing* includes clothing supplied to a man in hospital.

Paragraph (2). This is not intended to punish a soldier for a deficiency in his kit occasioned by accident or mere carelessness rather than by culpable neglect. On the other hand, the fact that a man has not got his arms, regimental necessities, &c., at a time when it was his duty to have them, is *prima facie* evidence of his having lost them by neglect, and the court may call on him to show that the loss was not occasioned by any fault on his part.

Paragraph (3). *Military decoration*. This includes any medal, clasp, good-conduct badge, or decoration. Section 190 (18). Losing by neglect a military decoration is not an offence.

Paragraph (4). *Wilfully injures*. A charge for injuring the property here mentioned must be laid under this section, and not under section 41. The prosecutor must adduce evidence which will either prove, or enable the court to infer, that the injury was not accidental or done by some other person. If the injury appears to be the result of neglect, it will be for the court to determine whether the neglect was wilful and intended to injure the arms &c., or was mere carelessness. In the latter case no offence under this section would be committed. The regulation value will be taken (without evidence) to be the value of any article lost or damaged, which being a part of military equipment has a regulation value.

As to disqualification for sitting on a court to try an offence under this paragraph, see Rule 19 (B) (v) and note.

Part I. Paragraph (5). A soldier-groom who ill-treats the charger kept for military purposes of a mounted infantry officer will bring himself within this paragraph. "Horse" includes mule and other beasts of burden or draught. Section 190 (40).

*Offences in relation to False Documents and Statements.*

Falsifying official documents and false declarations.

25. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) In any report, return, muster roll, pay list, certificate, book, route, or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy—
  - (a.) Knowingly makes or is privy to the making of any false or fraudulent statement; or
  - (b.) Knowingly makes or is privy to the making of any omission with intent to defraud; or
- (2.) Knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters, or makes away with, any document which it is his duty to preserve or produce; or
- (3.) Where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration, shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

*NOTE.*

The court may use their military knowledge in determining any question as to the duty of the accused in a case arising under this section.

A trivial error in a report should not, in the absence of fraud or bad faith, be made the ground of a charge under paragraph (1) (a).

In a charge under paragraph (1) (b) or paragraph (2) of intent to defraud, it will not be necessary to show an intent to defraud the government or a particular individual, so long as an intent to defraud is shown.

A charge under paragraph (2) or (3) should show why it was the accused's duty to preserve the document or to make the declaration; but where the situation of the accused is proved, the court may use their military knowledge to infer his duty.

Paragraph (3) does not include statements in a summary of evidence or verbal statements.

Neglect to report and signing in blank.

26. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) When signing any document relating to pay, arms, ammunition, equipments, clothing, regimental necessaries, provisions, furniture, bedding, blankets, sheets, utensils, forage, or stores, leaves in blank any material part for which his signature is a voucher; or
- (2.) Refuses, or by culpable neglect omits, to make or send a report or return which it is his duty to make or send, shall on conviction by court-martial be liable, if an officer, to be

cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned. Part I.  
ss. 26-28.

## NOTE.

Paragraph (2). The charge must show that it was the duty of the accused to make the report or return. If the report or return was one for which the superior had no right to call, there is no punishment for a refusal to make it. The neglect must be something more than mere forgetfulness or mistake.

27. Every person subject to military law who commits any of the following offences; that is to say, False accusation, or false statement by soldier.

- (1.) Being an officer or soldier, makes a false accusation against any other officer or soldier, knowing such accusation to be false; or
- (2.) Being an officer or soldier, in making a complaint where he thinks himself wronged, knowingly makes any false statement affecting the character of an officer or soldier, or knowingly and wilfully suppresses any material facts; or
- (3.) Being a soldier, falsely states to his commanding officer that he has been guilty of desertion or of fraudulent enlistment, or of desertion from the Navy, or has served in and been discharged from any portion of the regular forces, reserve forces, or auxiliary forces, or the Navy; or
- (4.) Being a soldier, makes a wilfully false statement to any military officer or justice in respect of the prolongation of furlough,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

## NOTE.

Paragraph (1). A mere false statement, not involving an accusation, is not within this paragraph.

Paragraph (3). *To his commanding officer.* It is not enough for the statement to be made merely to a superior officer; but the term "commanding officer" will include any one whose duty it would be under the King's Regulations or according to the custom of the service to deal with a charge of desertion or fraudulent enlistment, if it were made against the soldier. A written statement made to any person for the purpose of being laid before the commanding officer is a statement to the commanding officer.

Paragraph (4). *Prolongation of furlough.* A justice has power under s. 173 to extend furloughs in certain cases for a month.

*Offences in relation to Courts-Martial.*

28. Every person subject to military law who commits any of the following offences; that is to say, Offences in relation to courts-martial.

- (1.) Being duly summoned or ordered to attend as a witness before a court-martial, makes default in attending; or
- (2.) Refuses to take an oath or make a solemn declaration legally required by a court-martial to be taken or made; or



- Part I. (3.) Refuses to produce any document in his power or control  
 s. 28. legally required by a court-martial to be produced by him; or  
 (4.) Refuses, when a witness, to answer any question to which a  
 court-martial may legally require an answer; or  
 (5.) Is guilty of contempt of a court-martial by using insulting or  
 threatening language, or by causing any interruption or  
 disturbance in the proceedings of such court,

shall on conviction by a court-martial, other than the court in relation to or before whom the offence was committed, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned:

Provided that where a person subject to military law is guilty of contempt of a court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court, that court, if they think it expedient, instead of the offender being tried by another court-martial, may, by order under the hand of the president, order the offender to be imprisoned, with or without hard labour, or, in the case of a soldier, to undergo detention, for a period not exceeding twenty-one days.

#### NOTE.

See generally as to summoning and attendance of witnesses, Rules 14, 75-78.

An offence under this section is not triable by the court in relation to or before whom it was committed, except that for contempt of court by a person subject to military law the court may order him to be imprisoned, or, if he is a soldier, to undergo detention, for not more than 21 days. (See Rule 59, note.) If the offender is a soldier, he will, as a general rule, be sentenced to detention and not to imprisonment. For form of commitment, see Form U, p. 598 *infra*.

As a rule courts should accept an apology sufficient to vindicate their dignity without resorting to the extreme measure of imprisonment.

Civilians guilty of the offences mentioned in this section are punishable by a civil court under s. 126.

Paragraph (1). The court is formed when the members are assembled, even before they are sworn, and anything which would be a contempt after the court was sworn would be a contempt once the members are assembled.

Paragraph (5). The interruption or disturbance need not be caused within the precincts of the court itself, if the circumstances are such as to constitute a contempt of court.

Proviso. The enactments of s. 47 (5) and s. 48 (6) which prohibit a regimental or district court from trying an officer, would not exempt an officer guilty of contempt of such a court from liability to be committed to prison by the court under this proviso; but the correct course for the court would almost invariably be to adjourn and report to the proper authority. The summary proceeding for contempt is not a trial, and the offence being as a rule committed in view of the court, opportunity should be given to the offender to offer any explanation of, or excuse for, his conduct, but no further inquiry will be necessary. The order of the court does not require confirmation.

To imprison or send to detention for contempt of court a person who is under trial, though legal, requires very exceptional circumstances to justify



it; punishment so inflicted must immediately follow the contempt, and cannot be an addition to any sentence after conviction, or be ordered to commence at the date of the expiration of the punishment under the sentence. The court must adjourn until the expiration of the punishment inflicted for the contempt.

Part I.  
ss. 28-30.

29. Every person subject to military law who commits the following offence; that is to say, False evidence.

When examined on oath or solemn declaration before a court-martial, or any court or officer authorised by this Act to administer an oath, wilfully gives false evidence, shall be liable on conviction by court-martial to suffer imprisonment, or such less punishment as is in this Act mentioned.

#### NOTE.

Accidental or trifling mistakes or discrepancies in evidence will not be made the subject of a charge under this section.

The production of the proceedings of the court-martial before which the false swearing is alleged to have taken place is not enough to prove that the accused swore as charged. The member of the court who recorded the proceedings, or some person from personal knowledge must prove this. The evidence of one witness without corroboration in some material respect is not sufficient to prove the falsehood of the matter sworn. (See Ch. VII, para. 72.)

This section will be applicable to an accused person who applies to give evidence himself, but a charge should not be preferred against him except in a very flagrant case.

As the Act (s. 70 (5)), and the Rules of Procedure (Rule 124 (H)) now provide that evidence may be given on oath before a court of inquiry, a person who wilfully gives false evidence on oath before such a court is guilty of an offence under this section.

#### *Offences in relation to Billeting.*

30. Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to billeting); that is to say, Offences in relation to billeting.

- (1.) Is guilty of any ill-treatment, by violence, extortion, or making disturbances in billets, of the occupier of a house in which any person or horse is billeted; or
- (2.) Being an officer, refuses or neglects, on complaint and proof of such ill-treatment by any officer or soldier under his command, to cause compensation to be made for the same; or
- (3.) Fails to comply with the provisions of this Act with respect to the payment of the just demands of the person on whom he or any officer or soldier under his command, or his or their horses, have been billeted, or to the making up and transmitting of an account of the money due to such person; or
- (4.) Wilfully demands billets which are not actually required for some person or horse entitled to be billeted; or
- (5.) Takes, or knowingly suffers to be taken, from any person any money or reward for excusing or relieving any person from

Part I.  
s. 30-31.

- his liability in respect of the billeting or quartering of officers, soldiers, or horses, or any part of such liability ; or
- (6.) Uses or offers any menace to or compulsion on a constable or other civil officer to make him give billets contrary to this Act, or tending to deter or discourage him from performing any part of his duty under the provisions of this Act relating to billeting, or tending to induce him to do anything contrary to his said duty ; or
- (7.) Uses or offers any menace to or compulsion on any person tending to oblige him to receive, without his consent, any person or horse not duly billeted upon him in pursuance of the provisions of this Act relating to billeting, or to furnish any accommodation which he is not thereby required to furnish,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

The provisions as to the billeting of officers and soldiers are contained in Part III, ss. 102-111, and ss. 119-121.

See s. 111 as to the jurisdiction of magistrates to deal with officers or soldiers guilty of offences under this section.

Paragraph (4). *Wilfully demands.* The demand constitutes the offence, and it is immaterial whether the billet is actually obtained or not.

*Offences in relation to Impressment of Carriages.*

Offences in  
relation to  
the impress-  
ment of  
carriages,  
and their  
attendants.

31. Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to the impressment of carriages); that is to say,

- (1.) Wilfully demands any carriages, animals, or vessels, which are not actually required for the purposes authorised by this Act ; or
- (2.) Fails to comply with the provisions of this Act relating to the impressment of carriages as regards the payment of sums due for carriages or as regards the weighing of the load ; or
- (3.) Constrains any carriage, animal, or vessel furnished in pursuance of the provisions of this Act relating to the impressment of carriages, to travel against the will of the person in charge thereof beyond the proper distance, or to carry against the will of such person any greater weight than he is required by the said provisions to carry ; or
- (4.) Does not discharge as speedily as practicable any carriage, animal, or vessel furnished in pursuance of the provisions of this Act relating to the impressment of carriages ; or
- (5.) Compels the person in charge of any such carriage, animal, or vessel, or permits him to be compelled, to take thereon

any baggage or stores not entitled to be carried, or, except where the carriage or animal is furnished upon a requisition of emergency, to take thereon any soldier or servant (except such as are sick), or any woman or person ; or

Part I.  
ss. 31-32.

- (6.) Ill-treats or permits such person in charge to be ill-treated ; or  
 (7.) Uses or offers any menace to or compulsion on, a constable to make him provide any carriage, animal, or vessel, which he is not bound in pursuance of the provisions of this Act relating to the impressment of carriages to provide, or tending to deter or discourage him from performing any part of his duty in relation to the providing of carriages, animals, or vessels, or tending to induce him to do anything contrary to his said duty ; or

- (8.) Forces any carriage, animal, or vessel, from the owner thereof,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

The provisions as to the impressment of carriages are contained in Part III, ss. 112-121.

As to the jurisdiction of magistrates to deal with officers and soldiers guilty of these offences, see s. 118.

*Offences in relation to Enlistment.*

32. (1.) Every person having become subject to military law, who is discovered to have committed the following offence ; that is to say,

Enlistment of soldier or sailor discharged with ignominy or disgrace.

Having been discharged with disgrace from any part of His Majesty's forces, or having been dismissed with disgrace from the Navy, has afterwards enlisted in the regular forces without declaring the circumstances of his discharge or dismissal, shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

(2.) For the purpose of this section, the expression "discharged with disgrace from any part of His Majesty's forces" means discharged with ignominy, discharged as incorrigible and worthless, discharged for misconduct, or discharged on account of conviction for felony or of a sentence of penal servitude.

NOTE.

*Having become subject, i.e.,* having signed the declaration and taken the oath, s. 80 (4) (b). The wording in this and the next section is different from that in other sections ("every person subject, &c., who commits," &c.), because at the moment of committing the offence the man is not actually subject to military law.

*Enlisted.* The original or the duplicate attestation paper must be produced at the trial.

**Part I.** It is held that the non-declaration is *prima facie* proved by the attestation paper so produced showing answers to have been given inconsistent with such ss. 32-34. declaration.

A man who can show that when discharged he was not (from not having had a discharge certificate given him or for any other reason) made acquainted with the fact that his discharge was for one of the reasons constituting disgrace, ought not to be convicted under this section.

*For misconduct.* These words, which were added by the Army (Annual) Act, 1893, are not found in the corresponding section (10 (3)) of the Militia Act, 1882.

False  
answers or  
declarations  
on enlist-  
ment.

**33.** Every person having become subject to military law who is discovered to have committed the following offence; that is to say,

To have made a wilfully false answer to any question set forth in the attestation paper which has been put to him by, or by direction of, the justice before whom he appears for the purpose of being attested,

shall on conviction by court-martial be liable to suffer imprisonment or such less punishment as is in this Act mentioned.

**NOTE.**

*Having become subject.* See note to the preceding section.

*Attestation paper.* The original or the duplicate must be produced at the trial.

The answer must be wilfully false; thus where a man might reasonably have been mistaken as to the fact of his having "served," where, for instance, he was discharged as unfit before he had done duty or worn a uniform, a conviction would not hold good.

A false answer as to age, as a rule, should not be made the subject of a charge.

Men enlisting after being dismissed from the Navy as "objectionable," or under any other circumstances (except "with disgrace," as to which see s. 32 (1)) will be proceeded against under this section.

General  
offences in  
relation to  
enlistment.

**34.** Every person subject to military law who commits any of the following offences; that is to say,

(1.) Is concerned in the enlistment for service in the regular forces of any man, when he knows or has reasonable cause to believe such man to be so circumstanced that by enlisting he commits an offence against this Act; or

(2.) Wilfully contravenes any enactments or the regulations of the service in any matter relating to the enlistment or attestation of soldiers of the regular forces,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

**NOTE.**

*So circumstanced, i.e.,* discharged with disgrace, so that he commits an offence under s. 32; or, belonging to the regular forces, or otherwise, so that he is guilty of fraudulent enlistment under s. 13, or of making a false answer under s. 33.

A recruiter who counsels, or connives at, an offence against s. 33 on the part of a recruit, falls within paragraph (1), as the attestation is part of the process of enlistment.

*Miscellaneous Military Offences.*

## Part I.

35. Every person subject to military law who commits the following offence ; that is to say,

ss. 35-37.  
Traitorous words.

Uses traitorous or disloyal words regarding the Sovereign, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

## NOTE.

The words used are to be set out in the charge ; they may be either spoken, or written, or published. It is not intended that mere violent or vulgar language used by a man under the influence of liquor should be punished under this section.

36. Every person subject to military law who commits the following offence ; that is to say,

Injurious disclosures.

Whether serving with any of His Majesty's forces or not, without due authority, either verbally or in writing, or by signal or otherwise, discloses the numbers or position of any forces, or any magazines or stores thereof, or any preparations for, or orders relating to, operations or movements of any forces, at such time and in such manner as in the opinion of the court to have produced effects injurious to His Majesty's service,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

## NOTE.

The unauthorised communication of intelligence to the enemy on active service is punishable under s. 5 (4).

A charge under this section must show how and when effects injurious to His Majesty's service were produced.

As to injurious disclosures by private letters, see note to s. 5 (4) ; and, as to publishing military information, K.R., para. 453.

37. Every officer or non-commissioned officer who commits any of the following offences ; that is to say,

Ill-treating soldier.

(1.) Strikes or otherwise ill-treats any soldier ; or

(2.) Having received the pay of any officer or soldier, unlawfully detains or unlawfully refuses to pay the same when due,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a non-commissioned officer, to suffer imprisonment, or such less punishment as is in this Act mentioned.

## NOTE.

Paragraph (1). Forcing or striking a soldier when acting as sentinel is punishable under s. 6 (1) (d) more severely than the mere striking a soldier.



**Part I.** As the word "soldier" includes non-commissioned officer, it follows that the offence of one non-commissioned officer striking or ill-treating another who is not his superior falls within this section. Striking a superior officer is an offence dealt with under s. 8.

Duelling and attempting to commit suicide.

**38.** Every person subject to military law who commits any of the following offences; that is to say,

(1.) Fights, or promotes or is concerned in, or connives at, fighting a duel; or

(2.) Attempts to commit suicide,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

**NOTE.**

An officer carrying a challenge is punishable under paragraph (1).

If death ensued, the surviving principal in the duel and both the seconds might be tried and convicted for murder.

As to attempts to commit suicide, see ch. VII, para. 54, note (4).

Refusal to deliver to civil power officers and soldiers accused of civil offences.

**39.** Every person subject to military law who commits any of the following offences; that is to say,

On application being made to him, neglects or refuses to deliver over to the civil magistrate, or to assist in the lawful apprehension of, any officer or soldier accused of an offence punishable by a civil court,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

**NOTE.**

This offence may be committed not only in the United Kingdom, but in any colony or possession where there is a civilian judicature. An officer or soldier to whom an application is made under this section may require to see the warrant or other authority for the delivery over or apprehension; and if none exists, no offence is committed by refusing the demand.

Conduct to prejudice of military discipline.

**40.** Every person subject to military law who commits any of the following offences; that is to say,

Is guilty of any act, conduct, disorder, or neglect, to the prejudice of good order and military discipline,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned. Provided that no person shall be charged under this section in respect of any offence for which special provision is made in any other part of this Act, and which is not a civil offence; nevertheless the conviction of a person so charged shall not be invalid by reason only of the charge being in contravention of this proviso, unless it appears that injustice has been done to



the person charged, by reason of such contravention; but the responsibility of any officer for that contravention shall not be removed by the validity of the conviction. Part I.  
ss. 40-41.

## NOTE.

See Ch. III, para. 32.

To sustain a charge under this section it is absolutely necessary that the charge should recite the words of the Act. That is to say, there must be charged an "act" or "conduct," or "disorder," or "neglect," as the case may be, "to the prejudice of good order and military discipline."

But the mere use of these words as a description of certain conduct does not warrant a court in assuming that such conduct is legally an offence. A court is not warranted in convicting unless of opinion that the conduct charged (1) was committed by the accused, and (2) was to the prejudice both of good order and of military discipline, having regard to the conduct itself and to the circumstances in which it took place. It is only in this latter case that an offence of a non-military character falls within this section. Other offences of a non-military character, if tried at all under the Act, should be tried under s. 41.

Neglect must be wilful or culpable, and not merely arising from ordinary forgetfulness or error of judgment, or inadvertence; and where the use of certain words regarding superiors is made the subject of a charge under this section, the words must have been said meaningly, *i.e.*, with a guilty intent.

Attempts to commit most of the purely military offences under the Act are triable under this section, except where such attempts are (*e.g.*, an attempt to desert) specifically provided for.

A charge of displaying the white flag in the presence of the enemy is to be framed under this section: K.R., para. 555; as also a charge of improperly possessing a comrade's property, where there is no evidence of theft: K.R., para. 556.

*Offences punishable by ordinary Law.*

41. Subject to such regulations for the purpose of preventing interference with the jurisdiction of the civil courts as are in this Act after mentioned, every person who, whilst he is subject to military law, shall commit any of the offences in this section mentioned, shall be deemed to be guilty of an offence against military law, and, if charged under this section with any such offence (in this Act referred to as a civil offence), shall be liable to be tried by court-martial, and on conviction to be punished as follows; that is to say,

Offences  
punishable  
by ordinary  
law of  
England.

- (1.) If he is convicted of treason, be liable to suffer death, or such less punishment as is in this Act mentioned; and
- (2.) If he is convicted of murder, be liable to suffer death; and
- (3.) If he is convicted of manslaughter or treason-felony, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and
- (4.) If he is convicted of rape, be liable to suffer penal servitude or such less punishment as is in this Act mentioned; and

Part I.  
s. 41.

(5.) If he is convicted of any offence not before in this section particularly specified, which when committed in England is punishable by the law of England, be liable whether the offence is committed in England or elsewhere, either to suffer such punishment as might be awarded to him in pursuance of this Act in respect of an act to the prejudice of good order and military discipline, or to suffer any punishment assigned for such offence by the law of England.

Provided as follows :—

- (a.) A person subject to military law shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape, committed in the United Kingdom, and shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape, committed in any place within His Majesty's dominions, other than the United Kingdom and Gibraltar, unless such person at the time he committed the offence was on active service, or such place is more than one hundred miles as measured in a straight line from any city or town in which the offender can be tried for such offence by a competent civil court :
- (b.) A person subject to military law when in His Majesty's dominions may be tried by any competent civil court for any offence for which he would be triable if he were not subject to military law.

#### NOTE.

*Subject to such regulations, &c.* See provisos (a) and (b).

As to the cases in which the jurisdiction given by this section should be exercised, see Ch. VII, paras. 1-3.

This section in effect gives absolute jurisdiction to a court-martial to try any civil offence, except that a court-martial cannot try treason, murder, manslaughter, treason-felony, or rape, committed in the United Kingdom; and can only try these offences if committed in any place within the King's dominions, other than the United Kingdom and Gibraltar, if either the offender was on active service, or the place is more than one hundred miles from any city or town in which the offender can be tried for such offence by a competent civil court.

For definition of active service, see s. 189.

Where a civil offence is specified in the Act (*e.g.*, ss. 17, 18), an attempt to commit that offence can under (5) be ordinarily tried by court-martial, because by English law an attempt to commit a civil offence is ordinarily in itself an offence. See Ch. VII, para. 23.

A field general court-martial under s. 49 (3) has jurisdiction to try any offence; but where the offence is not committed on active service, such a court can only be convened for its trial in the cases specified in s. 49 (1) (a).

See also note to Rule 11 (A)-(C), as to the form of charges under this section.

*Redress of Wrongs.*

## Part I.

42. If an officer thinks himself wronged by his commanding officer, and, on due application made to him, does not receive the redress to which he may consider himself entitled, he may complain to the Commander-in-Chief in order to obtain justice, who is hereby required to examine into such complaint, and through a Secretary of State make his report to His Majesty in order to receive the directions of His Majesty thereon.

ss. 42-43.

Mode of  
complaint  
by officer.

## NOTE.

It is the custom of the service to forward every complaint through the officer commanding the regiment; and an officer would not be justified in deviating from this course, unless the commanding officer should refuse, or unreasonably delay, to forward it. An officer, on addressing himself directly to the general in command, should apprise his commanding officer of his doing so, and must observe in the channel of approach to the Commander-in-Chief each intermediate gradation of command.

Although the Commander-in-Chief is required to examine into the complaint and report to His Majesty, he is not debarred from expressing his own view of the case. Even an expression of opinion by the intermediate general officer will in many cases suffice to render further steps unnecessary. An officer should not be disposed to push to extremes his right to bring his complaint before the Sovereign. The report to His Majesty is to be made through the Secretary of State, the constitutional adviser of the Crown.

This section does not appear to limit the right of the Sovereign to receive complaints, but only to control the manner in which officers thinking themselves wronged are to approach the Sovereign. Therefore, although there may be no Commander-in-Chief, it remains open to the Sovereign to give directions as to any complaints which may be brought before him by the Secretary of State.

A false accusation or statement made on preferring a complaint under this section is punishable under s. 27 (1) (2).

43. If any soldier thinks himself wronged in any matter by any officer other than his captain, or by any soldier, he may complain thereof to his captain, and if he thinks himself wronged by his captain, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to his commanding officer, and if he thinks himself wronged by his commanding officer, either in respect of his complaint not being redressed, or in respect of any other matter, he may complain thereof to the prescribed general officer, or, in the case of a soldier serving in India, to such officer as the Commander-in-Chief of the forces in India with the approval of the Governor-General of India in Council may appoint; and every officer to whom a complaint is made in pursuance of this section shall cause such complaint to be inquired into, and shall, if on inquiry he is satisfied of the justice of the complaint so made, take such steps

Mode of  
complaint  
by soldier.

Part I. as may be necessary for giving full redress to the complainant in  
 ss. 43-44. respect of the matter complained of.

#### NOTE.

The mode of preferring a complaint is set forth in the form in the soldier's personal account book. Complaints may be made respecting any matter, but can be made by an individual only. The combined complaint of several can never be permissible, but should not, if well founded, be treated as mutinous, where it is plain that the only object of those making the complaint is to procure redress of the matters by which they think themselves wronged. A complaint cannot be legitimately preferred to a superior officer except in the regular course defined by this section,—that is to say, first to the captain and then to the commanding officer. It is only where the captain refuses or unnecessarily delays to redress or forward the complaint that a direct application can be made to the commanding officer; and it is only if the commanding officer similarly refuses or delays, that a direct application can be made to the proper general officer. The captain, in the one case, and the commanding officer in the other, ought to be informed of the application being made to his superior.

*Prescribed General Officer:* see Rule 126 (E).

The commanding officer to whom the complaint is made will usually be the commanding officer as defined in Rule 129; but if the complaint is made to any other officer, that officer should receive it and should at once forward it to the commanding officer of the complaining soldier as defined by that Rule, and the complaint will then be dealt with as properly made.

The only exception to the above rule as to the course of complaints is on occasion of the question which general officers at their yearly inspections are required to put to regiments, as to whether there are any complaints. See K.R., para. 127.

A soldier cannot in any way be punished for making a complaint under this section, whether it be frivolous or not, and he ought not, for making a complaint, to be treated in any way with harshness or suspicion.

A false accusation or statement made on preferring a complaint under this section is punishable under s. 27 (1) (2).

It has been held that as between persons both subject to military law the mode of redress given by this section is the only one open. Civil courts cannot be invoked to redress grievances between persons subject to military law: see *Dawkins v. Lord Paulet*, L.R. 5 Q.B. at p. 121; *Marks v. Frogley* [1898] 1 Q.B. at pp. 899, 900.

#### *Punishments.*

44. Punishments may be inflicted in respect of offences committed by persons subject to military law and convicted by courts-martial,—

In the case of officers, according to the scale following :

- a. Death.
- b. Penal servitude for a term not less than three years.
- c. Imprisonment, with or without hard labour, for a term not exceeding two years.
- d. Cashiering.
- e. Dismissal from His Majesty's service.

Scale of  
punish-  
ments by  
courts-  
martial.

*f.* Forfeiture, in the prescribed manner, of seniority of rank either in the army or in the corps to which the offender belongs, or in both.

*g.* Reprimand, or severe reprimand.

In the case of soldiers, according to the scale following :

*h.* Death.

*j.* Penal servitude for a term not less than three years.

*k.* Imprisonment, with or without hard labour, for a term not exceeding two years.

*kk.* Detention for a term not exceeding two years.

*l.* Discharge with ignominy from His Majesty's service.

*m.* In the case of a non-commissioned officer, forfeiture, in the prescribed manner, of seniority of rank, or reduction to a lower grade, or to the ranks.

*n.* Forfeitures, fines, and stoppages.

Provided that—

(1.) Where in respect of any offence under this Act there is specified a particular punishment, or such less punishment as is in this Act mentioned, there may be awarded in respect of that offence, instead of such particular punishment (but subject to the other regulations of this Act as to punishments, and regard being had to the nature and degree of the offence) any one punishment lower in the above scales than the particular punishment.

(1A.) For the purposes of commutation and revision of punishment, detention shall not be deemed to be a less punishment than imprisonment if the term of detention is longer than the term of imprisonment.

(2.) An officer shall be sentenced to be cashiered before he is sentenced to penal servitude or imprisonment.

(3.) An officer when sentenced to forfeiture of seniority of rank may also be sentenced to reprimand or severe reprimand.

(4.) A soldier when sentenced to penal servitude or imprisonment may, in addition thereto, be sentenced to be discharged with ignominy from His Majesty's service.

(5.) Where a soldier on active service is guilty of any offence, it shall be lawful for a court-martial to award for that offence such field punishment, other than flogging, as may be directed by rules to be made from time to time by a Secretary of State, and such field punishment shall be of the character of personal restraint or of hard labour, but shall not be of a nature to cause injury to life or limb.

(6.) In addition to or without any other punishment in respect of an offence committed by a soldier on active service, it shall be lawful for a court-martial to order that the offender forfeit all ordinary pay for a period commencing on the day of the sentence and not exceeding three months.



Part I.

s. 44.

*	*	*	*	*
*	*	*	*	*

- (9.) All rules with respect to field punishment made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament.
- (10.) For the purpose of commutation of punishment the field punishment above mentioned shall be deemed to stand in the scale of punishments next below detention.
- (11.) In addition to, or without, any other punishment in respect of any offence, an offender convicted by court-martial may be subjected to forfeiture of any deferred pay, service towards pension, military decoration or military reward, in such manner as may for the time being be provided by Royal Warrant, but shall not, save as may be provided by Royal Warrant, be liable to any forfeiture under the Regimental Debts Act, 1893, or under any Act relating to the military savings banks, or any regulations made in pursuance of either of the above-mentioned Acts.
- (12.) In addition to, or without, any other punishment in respect of any offence, an offender may be sentenced by court-martial to any deduction authorised by this Act to be made from his ordinary pay.
- (13.) No officer or non-commissioned officer shall, under or by virtue of any power or authority derived from any foreign potentate or ruler, inflict, or cause to be inflicted, on any person subject to military law under this Act, for or in respect of any offence against such law, any punishment not authorised by this Act.

56 & 57 Vict.  
c. 5.

## NOTE.

As to the principle of affixing to each offence a maximum punishment, instead of, as formerly, "such punishment as a general or other court-martial may award," see Ch. III, para. 35.

*b. Penal Servitude.* See as to the execution of a sentence of penal servitude, sections 58-62, and sections 68, 131, and notes.

*c. Imprisonment.* As to rules for awarding terms of imprisonment in days, months, or years, as the case may require, see K.R., para. 585. As to execution of a sentence, see ss. 63-67, 131-135, and notes; and as to duration of sentence, see s. 68.

An offender sentenced to imprisonment without hard labour is, in England, obliged by prison rules to do some labour, unless directed to be imprisoned as an offender of the first division, in which case he is allowed to receive visits and has other privileges. Persons directed to be treated as offenders of the second division can only be employed at work of an industrial or manufacturing nature and have other privileges.

An offender does not cease to be subject to the Act while undergoing a



sentence of penal servitude, imprisonment, or detention, though he has been discharged or dismissed from the service. S. 158 (2).

*f. Forfeiture . . of seniority of rank.* See Rule 47.

*g. Reprimand or severe reprimand.* Reprimands vary from a public and severe reprimand to a private reprimand. A public reprimand may be administered at the head of a battalion, regiment, brigade, or division, paraded for the purpose; or it may be conveyed in general orders. A private reprimand is usually given by the commanding officer of a battalion, regiment, or brigade, at his quarters, in the presence of the officers of the regiment, or of the officers of equal and superior rank only, or simply in the presence of a staff officer. The manner and time of delivering the reprimand is appointed by the confirming authority.

For the additional punishment of deduction from pay, see proviso (12) and section 137.

*k. Imprisonment.* The introduction of the new punishment of detention will have the effect of limiting very much the cases in which a soldier will be sentenced to imprisonment. A soldier convicted by court-martial of an offence under ss. 17, 18 (4), 18 (5), or 41, whom it is not desired to retain in the Army, should, as heretofore, be sentenced to imprisonment, but in case he is convicted of any other offence (*i.e.*, a military offence), and it is desired to retain him in the Army, he should be sentenced to detention; if, however, on account of previous bad character, or for any other reason it is considered undesirable that he should rejoin the colours after serving his sentence, the court will still have power to sentence him to imprisonment.

*kk. Detention.* See ch. III, para. 36, and ch. V, para. 103.

As to rules for awarding terms of detention inflicted by a commanding officer, see Notes to Rule 6.

A soldier sentenced to three months' detention, or upwards, is liable in commutation thereof, either wholly or partly, to general service and to transfer to any corps. Section 83 (7).

*m. Forfeiture.* Service in the lower grade or loss of seniority will reckon from the date of signing the original sentence, whether the original sentence was forfeiture of seniority or reduction, or whether the punishment in question was a revised sentence, or a mitigation by the confirming officer from a more severe sentence. As to the reduction of warrant officers, see s. 182 (2) (3), and of warrant officers in the Indian forces, s. 180 (2) (f).

*Forfeiture in the prescribed manner.* See Rule 47. The power to forfeit seniority of rank in case of non-commissioned officers was introduced by the Army (Annual) Act, 1906.

*n. Forfeitures, i.e., forfeitures of service towards discharge,* see sections 79 (2), 84, 161 (which, however, are consequential and cannot be awarded by sentence of court-martial), and the forfeitures mentioned in provisos (6), (11), and (12) of this section, which include forfeiture of good conduct badges and medals with the pay or money attached thereto, and can usually be awarded by court-martial, but under the Pay Warrant, arts. 1022 and 1160, cannot be awarded by a regimental court-martial. They may be more severe in effect than a short term of imprisonment or detention.

As to restoration of forfeited service, see the provisos to s. 79 (2) and s. 161.

*Fines.* These are not authorised to be imposed for any offence except drunkenness, and cannot exceed, if imposed by a court-martial, one pound, or if imposed by a commanding officer, ten shillings: ss. 19, 46 (2) (b).

*Stoppages.* See proviso (12). Section 138 sets out the cases in which

Part I. penal deductions or stoppages may be made from the ordinary pay of the soldier; and section 139 provides for their remission.  
 ss. 44-45.

*Provisos.*

(1.) *Any one punishment.* Provisos (2), (3), (4), (6), (11), and (12) specify the particular instances in which more than one punishment may be given.

(2.) Care must be taken to comply with this provision; a sentence to penal servitude *and* to be cashiered is incorrect.

(4.) It will be observed that this does not apply in case of a soldier sentenced to detention.

(5.) For definition of active service, see section 189.

Death, or penal servitude, or imprisonment, or detention, but no other punishment, can be commuted into field punishment.

The following conditions are essential to the legality of field punishments:—

(1.) The offender must be on active service.

(2.) The punishment must be in conformity with the Rules made by the Secretary of State; see the Rules at p. 598.

(6.) Forfeiture of pay under this provision can only be ordered in case of an offence committed by a soldier on active service. If the soldier is at the time liable to any penal deductions from pay, the order only affects the balance of the pay remaining after those deductions: see section 138, Proviso (c).

(11.) As to these forfeitures, see Pay Warrant, 1907, arts. 1021-1026, 1043, 1044, 1052, 1064, 1158-1162.

(12.) As to these deductions see section 137 (officer) and section 133 (soldier.)

ARREST AND TRIAL.

*Arrest.*

Custody of  
persons  
charged  
with  
offences.

45. The following regulations shall be enacted with respect to persons subject to military law when charged with offences punishable under this Act:

(1.) Every person subject to military law when so charged may be taken into military custody: Provided, that in every case where any officer or soldier not on active service remains in such military custody for a longer period than eight days without a court-martial for his trial being ordered to assemble, a special report of the necessity for further delay shall be made by his commanding officer in manner prescribed; and a similar report shall be forwarded every eight days until a court-martial is assembled or the officer or soldier is released from custody:

(2.) Military custody means, according to the usages of the service, the putting the offender under arrest or the putting him in confinement:

(3.) An officer may order into military custody an officer of inferior rank or any soldier, and any non-commissioned officer may order into military custody any soldier, and an officer may order into military custody an officer (though he be of higher rank) engaged in a quarrel, fray,

or disorder; and any such order shall be obeyed, notwithstanding the person giving the order and the person in respect of whom the order is given do not belong to the same corps, arm, or branch of the service:

- (4.) An officer or non-commissioned officer commanding a guard, or a provost-marshal or assistant provost-marshal, shall not refuse to receive or keep any person who is committed to his custody by any officer or non-commissioned officer, but it shall be the duty of the officer or non-commissioned officer who commits any person into custody, to deliver at the time of such committal, or as soon as practicable, and in every case within twenty-four hours thereafter, to the officer, non-commissioned officer, provost-marshal, or assistant provost-marshal into whose custody the person is committed, an account in writing, signed by himself, of the offence with which the person so committed is charged:
- (5.) The charge made against every person taken into military custody shall, without unnecessary delay, be investigated by the proper military authority, and, as soon as may be, either proceedings shall be taken for punishing the offence, or such person shall be discharged from custody.

## NOTE.

It will be convenient to give a summary of the provisions for preventing a person from being kept in custody without his case being dealt with by the proper authority.

An officer or non-commissioned officer who commits a person into custody should sign and deliver to the officer or non-commissioned officer into whose custody such person is committed, a written account (termed "the charge") of the offence with which the person so committed is charged. He should if possible, do this at the time of committal, but at any rate must do so within 24 hours after that time. See ss. 21 (2), 45 (4). If the "charge" is not delivered at the time of committal, a verbal report to the same effect is to be made (K.R., para. 463), but non-delivery of the "charge" will not excuse a refusal to receive an offender into custody. The officer or non-commissioned officer into whose custody the accused is committed, must report in writing the name and offence of the accused, as far as known to him, and the name and rank of the person by whom he is charged (s. 21 (3)). This report must be made as soon as he is relieved from his guard or duty, if relieved within 24 hours after the committal, and in any case within those 24 hours. It must be accompanied by the "charge," if he has received it; and should be made by an entry in the guard report, and he should send the "charge," or a copy thereof, to the commanding officer of the accused (K.R., para. 463). If he has not received the "charge," he must mention the circumstance in his report, and if the "charge" is not delivered within the 24 hours, the commander of the guard must make a further report to the superior authority, who, if evidence sufficient to justify the retention in custody of the accused is not forthcoming, will, at the expiration of 48 hours from the time of committal, order him to be released (K.R.,

**Part I.** para. 463). A commanding officer who has received the report of the committal of an accused person becomes responsible (s. 45 (5)) for having the case investigated without delay. This delay, under Rule 2, is not to exceed 48 hours without the case being reported to the officer to whom application would be made to convene a court-martial for the trial of the person charged.

**s. 45-46.**

If eight days elapse without the case being disposed of summarily and without a court-martial being ordered to assemble, the special report required by section 45 (1), as explained by Rule 1, must be made, and a similar report is required to be forwarded every eight days; and this report will have to be sent by the commanding officer, even though the fault of the delay lies with the officer to whom the report is to be made. This special report is not required on active service. If unnecessary delay occurs in convening a general or district court-martial, a report has to be made to the Army Council. (Rule 17 (C)).

When an officer is placed in arrest by his commanding officer, the commanding officer should immediately report the case to superior authority.

With reference to the above observations, it must be recollected that in reckoning the time fixed by the Rules, Sunday, Good Friday, and Christmas Day are, as a general rule, excluded (Rule 135 (A)), but this is not the case in reckoning the days fixed by sections of the Act, e.g., ss. 21, 45 (1).

Paragraph (1). See generally as to Arrest and Confinement Ch. IV, paras. 1-17; and K.R., paras. 463-482.

*Special Report.* See Rule 1.

Paragraph (2). *Military custody.* This expression is here restricted by the opening words of the section to the military custody of persons when charged with offences, and does not apply to persons in military custody undergoing sentence. See K.R., paras. 465, 473. Military custody includes, in the case of volunteers, the custody of a volunteer ordered into arrest under s. 21 of the Volunteer Act, 1863. (See *Marks v. Frogley*, L.R. [1898] 1 Q.B. at p. 898.)

Paragraph (5). *Investigated.* All charges against non-commissioned officers and soldiers must now be investigated in the first instance by the company, &c., commander, who, in all cases where a private soldier is concerned, and in certain cases where a non-commissioned officer is concerned, may either dispose of the case himself or reserve it for the commanding officer (see K.R., paras. 484, 499); and, where the case is so reserved, the commanding officer must give the decision under s. 46 (1).

The commanding officer in this section means the commanding officer as defined by Rule 129; see K.R., para. 456.

As to the conduct of the investigation, see Ch. IV, paras. 18-30. Rules 2-8, and notes. K.R., paras. 483-492.

#### *Power of Commanding Officer.*

Power of commanding officer.

46. (1.) The commanding officer shall, upon an investigation being had of a charge made against a person subject to military law under his command of having committed an offence under this Act, dismiss the charge if he in his discretion thinks that it ought not to be proceeded with; but where he thinks the charge ought to be proceeded with he may take steps for bringing the offender to a court-martial, or, in the case of a soldier, may deal with the case summarily.

(2.) Where he deals with a case summarily, he may,—

(a.) Award to the offender detention for any period not exceeding fourteen days; and

- (b.) In the case of the offence of drunkenness, may order the offender to pay a fine not exceeding ten shillings, either in addition to or without detention ; and
- (c.) In addition to or without any other punishment may order the offender to suffer any deduction from his ordinary pay authorised by this Act to be made by the commanding officer ; and
- (d.) In the case of an offence by a soldier (not being a non-commissioned officer) on active service, may award to the offender field punishment within the meaning of section forty-four of this Act for any period not exceeding twenty-eight days, and may in addition to or without any other punishment order that the offender forfeit all ordinary pay for a period commencing on the day of the sentence and not exceeding twenty-eight days.

(3.) Where the charge is against a soldier for drunkenness the commanding officer shall deal with the case summarily, unless the offence was committed on active service or on duty, or after the offender was warned for duty, or unless by reason of the drunkenness the offender was found unfit for duty, or unless the soldier has been guilty of drunkenness on not less than four occasions in the preceding twelve months, but nothing in this sub-section shall affect the jurisdiction of any court-martial, or the right of the soldier to be tried by a district court-martial.

(4.) In the case of absence without leave, the commanding officer may award detention for any period not exceeding twenty-one days.

(5.) Provided that where detention is awarded for absence without leave, the commanding officer shall have regard to the number of days during which the offender has been absent, and in no case shall the term of detention awarded, if exceeding seven days, exceed the term of absence.

(6.) Provided that in every case where the commanding officer has power to deal with the case summarily, the accused person may demand that the evidence against him should be taken on oath, and the same oath or solemn declaration as that required to be taken by witnesses before a court-martial shall be administered to each witness in such case.

(7.) An offender shall not be liable to be tried by court-martial for any offence which has been dealt with summarily by his commanding officer, and shall not be liable to be punished by his commanding officer for any offence of which he has been acquitted or convicted by a competent civil court or by court-martial.

(8.) Where a commanding officer has power to deal with a case summarily under this section, and, after hearing the evidence, considers that he may so deal with the case, he shall, in every case where the award or finding involves a forfeiture of pay, and in every other case unless he awards one of the minor punishments referred to in



Part I.  
s. 46.

this section, ask the soldier charged whether he desires to be dealt with summarily or to be tried by a district court-martial, and, if the soldier elects to be tried by a district court-martial, the commanding officer shall take steps for bringing him to trial by a district court-martial, but otherwise shall proceed to deal with the case summarily.

(9.) Nothing in this section shall prejudice the power of a commanding officer to award such minor punishments as he is for the time being authorised to award, so, however, that a minor punishment shall not be awarded for any offence for which detention exceeding seven days is awarded.

#### NOTE.

See Ch. IV, paras. 31-38; Rules 2-7, and notes. As to meaning of *Commanding Officer*, see Rule 129 and note; K.R., para. 466.

The discretion of a commanding officer in acting under this section is regulated by K.R., paras. 487-492, and an officer not under the rank of brigadier-general may, within two years of the award, order him, where the offender has not completed the sentence, to cancel or mitigate the award, or if the sentence has been completed, to alter the record of the punishment awarded: K.R., para. 507; after the lapse of two years, any such action, if necessary, must be taken by the Army Council.

Sub-section (1). *In the case of a soldier.* "Soldier" includes non-commissioned officer, and "non-commissioned officer" includes acting non-commissioned officer, whether in receipt of pay as such or not, s. 190 (5), (6). But the obligation on a commanding officer to deal summarily with a soldier charged with drunkenness does not apply to a non-commissioned officer, s. 183 (1); and K.R., para. 499, forbid non-commissioned officers (including acting non-commissioned officers) to be subjected to summary punishment, but a non-commissioned officer may be admonished or reprimanded, and an acting non-commissioned officer may be ordered to revert to his permanent rank.

The power of a commanding officer under this section to deal summarily with a soldier does not extend to a warrant officer (see s. 182 (1)), nor to a person subject to military law who does not belong to His Majesty's forces, s. 184 (2).

Sub-section (2). *Detention.* The detention awarded by a commanding officer up to seven days will be awarded in hours (Rule 6, and note), and will as a rule be undergone in a branch detention barrack. For form of commitment, see Rules, App. III. Form G, p. 591 below, and as to detention barracks generally, K.R., paras. 646-660. As to commencement of term of detention, see Rule 6.

It must be observed that, as a result of the amendments introduced into this section by the Army (Annual) Act, 1906, a commanding officer can no longer inflict a sentence of imprisonment; he can only award detention, and a sentence of imprisonment if inflicted by him would be illegal.

(b) For scale of fines for drunkenness, mode of recovery, &c., see K.R., paras. 512, 513, and as to punishment for simple drunkenness, para. 497.

(c) *Deduction from ordinary pay.* See ss. 138, 139, and definition of "day" in s. 140, and note to those sections.

(d) This provision was introduced by the Army (Annual) Act, 1907. See Notes to section 44 (5), (6). The commanding officer in awarding field



punishment, or forfeiture of pay, cannot impose either punishment for more than 28 days.

Sub-section (3). Certain cases of drunkenness a commanding officer must deal with summarily, but he *may*, if he thinks fit, deal summarily with any case of drunkenness, though the offence was committed under the special circumstances mentioned in this sub-section. See above note to sub-section (1). See also K.R., para. 509.

Sub-section (4). *Absence*. See Ch. IV, para. 33, note to s. 138, and K.R. 495.

Sub-section (6). Formerly this sub-section only applied in cases of a charge for absence without leave exceeding seven days; but now it applies to all cases with which the commanding officer has power to deal summarily.

Sub-section (7). *Dealt with summarily*. If a commanding officer, contrary to the K.R., para. 487, which requires him to refer to superior authority certain offences, but, through inadvertence and with a full knowledge of the facts, deals with any offence summarily, the offender cannot be tried by court-martial for that offence.

*Acquitted or convicted by a civil court or a court-martial*. See note to s. 157. Nor can a man acquitted or convicted of an offence by a civil court or court-martial be tried by court-martial for the same offence; ss. 157, 162 (6). Where a soldier has been acquitted or convicted or summarily punished for an offence which is substantially the same as some other offence, he ought not to be summarily punished by his commanding officer or tried for such other offence. If, *e.g.*, he has been acquitted, or convicted of, or summarily punished for, absence without leave, and the absence amounted to desertion, he cannot be afterwards tried for desertion. Nor can a man convicted by a court-martial of an offence be afterwards sentenced by his commanding officer to stoppages for damage caused by that offence.

Sub-section (8). *By a district court-martial*. Formerly a soldier ordered by his commanding officer to suffer imprisonment, or to pay a fine, or to suffer any deduction from his ordinary pay, could claim the right of being tried by a district court-martial instead of submitting to the award. This provision was repealed by the Army (Annual) Act of 1893. Under the provision which was substituted by that Act for the repealed provision, and which, as amended by the Army (Annual) Act of 1904, is contained in this sub-section, a commanding officer, where he considers that he may deal with a case summarily, must in every case in which his sentence involves a forfeiture of pay, and in every other case in which he does not award a minor punishment, even although the sentence does not involve forfeiture of pay, give the soldier the option of being dealt with summarily or of being tried by a district court-martial. In other words, the soldier can now make his choice in the first instance between the tribunal of his commanding officer and a district court-martial, instead of having a sort of appeal from the judgment of his commanding officer to a district court. If the commanding officer omits to ask the soldier the question prescribed by this sub-section, the soldier can claim his right of trial by court-martial at any time on the same day before the hour fixed for the commitment and release of soldiers under sentence: Rule 7; and a soldier is to be given on the following day an opportunity of reconsidering his decision to be tried by court-martial: K.R., para. 496.

The amendment as to sentences involving forfeiture of pay, introduced by the Army (Annual) Act, 1904, gives the soldier a statutory right to make a claim which he has hitherto been allowed by custom to make.

A non-commissioned officer or soldier remanded by his commanding officer

**Part I.** to a regimental court-martial, cannot legally claim a district court-martial under this section, but a commanding officer should use his discretion in dealing with such a request.  
**ss. 4<sup>c</sup>-47.**

Sub-section (9). *Minor punishment.* This prevents the award of a minor punishment in addition to detention in the case of any offence for which more than seven days' detention has been awarded. See K.R., paras. 493-501. Non-commissioned officers may be reprimanded, but not subjected to minor punishments: K.R., para. 499.

Rule 6 (B) prohibits a commanding officer from increasing a punishment after he has once made his award, which is complete when the man has quitted his presence. This rule applies in the case of minor as well as of other punishments. But a commanding officer can at any time before the punishment has been completed mitigate or remit a minor or a summary punishment. As to entry of his award or decision see K.R., paras. 485, 507.

### *Courts-Martial.*

Regimental  
courts-  
martial.

**47. (1.)** Any officer authorised by or in pursuance of this Act to convene general and district courts-martial or either of them, also any commanding officer of a rank not below the rank of captain, also any officer of a rank not below the rank of captain when in command of two or more corps or portions of two or more corps, also on board a ship a commanding officer of any rank may, without warrant and by virtue of this Act, convene a regimental court-martial for the trial of offences committed by soldiers under his command.

(2.) Such court-martial shall consist of not less than three officers, each of whom must have held a commission during not less than one whole year.

(3.) The convening officer shall appoint the president.

(4.) The president of a regimental court-martial shall not be under the rank of captain, unless where the court-martial is held on the line of march, or on board any ship, or unless, in the opinion of the convening officer (such opinion to be expressed in the order convening the court and to be conclusive), a captain is not, with due regard to the public service, available, in any of which cases an officer of any rank may be president.

(5.) A regimental court-martial shall not try an officer, nor award the punishment of death, penal servitude, or imprisonment, or of detention in excess of forty-two days, or of discharge with ignominy; but, subject as aforesaid, and save as in this Act specially mentioned, any offence under this Act committed by a person subject to military law, and triable by court-martial, may be tried and punished by a regimental court-martial.

### NOTE.

The principal enactments which govern the convening, composition, and procedure of courts-martial are contained in this group of sections (ss.

47-56). The remainder of the law will be found in the supplemental provisions of the Act as to courts-martial (ss. 122-130) and as to evidence (ss. 163-165) and in the Rules of Procedure made under s. 70. Section 49 provides for the convening of the exceptional tribunal of a field general court-martial to try offences committed on active service, and offences against the inhabitants of, or residents in, countries beyond the seas, which it is not practicable to try by an ordinary court. Certain questions relating to jurisdiction of courts-martial are dealt with in ss. 157-162.

See ch. V for general explanation of the constitution and practice of courts-martial; and for details see the Rules of Procedure and notes. The King's Regulations, para. 487, specify the offences which a commanding officer is empowered, without reference to superior authority, to refer to trial by regimental court-martial; and point out (paras. 547, 552) the general rules under which different classes of offences should be dealt with by a lower or higher tribunal. As commanding officers can now (subject to the special limitation in subs. (5) of s. 46) award fourteen days' detention for any description of offence the assembly of regimental courts-martial will be infrequent.

Sub-section (1). *Commanding officer*. This does not mean any officer having command, but the commanding officer, as defined by Rule 129; see K.R., para. 456. An officer, therefore, will not have power to convene a regimental court-martial, unless he either (a) holds a warrant to convene a general or district court-martial; or (b) being of the rank of captain or higher rank, is in command of detachments of two or more corps; or (c) being of the rank of captain or higher rank, is the commanding officer as defined by Rule 129, i.e., the officer whose duty it is to tell off the accused; or (d) is the commanding officer of soldiers on board a ship.

*By soldiers under his command*. A camp follower or other person subject to military law as a soldier, but who does not belong to His Majesty's forces, cannot be tried by a regimental court-martial, s. 184. As to speedy convening of a regimental court, see Rule 16.

*Ship*. This section will apply to a military court-martial for trying a non-commissioned officer, if otherwise allowed to be held on board a ship commissioned by His Majesty. See Order in Council, para. 7 below, p. 606.

Sub-section (2). *A commission*. Consequently, an officer who had held a militia commission for eleven months, would be qualified to sit at the end of one month after he has obtained his army commission.

Sub-section (3). The convening officer cannot preside himself, or, indeed, be a member of the court: section 50 (2). The president must be appointed by name.

Sub-section (4). As to the duty of the president, see Rule 59. As to the confirmation of the sentence of a regimental court-martial, see s. 54 (1) (a).

Sub-section (5). *Officer*. This expression includes warrant and other officers holding honorary commissions (s. 190 (4)), and persons subject to military law as officers (s. 175). It must also be recollected that a warrant officer not holding an honorary commission cannot be tried by a regimental court-martial: s. 182 (1). Moreover, by K.R., para. 438, it is laid down that as a rule a non-commissioned officer above the rank of corporal is not to be tried by such court.

Officers of any corps may sit on a regimental court-martial (s. 50 (1)), and the offender may be tried although no officer of the court belongs to the corps of the offender. But see Rule 20 (B) as to the trial of an offender not belonging to the regular forces. A qualified officer willing to sit may sit, although not under the orders of the convening officer: e.g., the commanding officer of a detached part of a corps may convene a regimental

Part I. court-martial composed of officers of other corps, if they are willing to serve. It has, however, been already indicated that a commanding officer will usually apply for a district court-martial, if he does not deal summarily with an offence.

It must be observed that, under the amendments introduced into this subsection by the Army (Annual) Act, 1906, the maximum sentence which a regimental court-martial can inflict is 42 days' detention, and that any sentence of imprisonment would be illegal.

General  
and district  
courts-  
martial.

48. The following rules are enacted with respect to general courts-martial and district courts-martial :

- (1.) A general court-martial shall be convened by His Majesty, or some officer deriving authority to convene a general court-martial immediately or mediately from His Majesty :
- (2.) A district court-martial shall be convened by an officer authorised to convene general courts-martial, or some officer deriving authority to convene a district court-martial from an officer authorised to convene general courts-martial :
- (3.) A general court-martial shall consist, in the United Kingdom, India, Malta, and Gibraltar, of not less than nine, and elsewhere of not less than five, officers, each of whom must have held a commission during not less than three whole years, and of whom not less than five must be of a rank not below that of captain :
- (4.) A district court-martial shall consist of not less than three officers, each of whom must have held a commission during not less than two whole years :
- (5.) The minimum number mentioned in this section for a general or district court-martial shall be the legal minimum for that court-martial :
- (6.) A district court-martial shall not try a person subject to military law as an officer, nor award the punishment of death or penal servitude ; but, subject as aforesaid, any offence under this Act committed by a person subject to military law, and triable by court-martial, may be tried and punished by either a general or district court-martial :
- (7.) An officer under the rank of captain shall not be a member of a court-martial for the trial of a field officer :
- (8.) Sentence of death shall not be passed on any prisoner without the concurrence of two-thirds at the least of the officers serving on the court-martial by which he is tried :
- (9.) The president of a court-martial, whether general or district, shall be appointed by order of the authority convening the court ; but he shall not be under the rank of field officer, unless the officer convening the court is under that rank, or unless in the opinion of the officer who convenes the court, such opinion to be expressed in the order convening

the court, and to be conclusive, a field officer is not, with due regard to the public service, available, in either of which cases an officer not below the rank of captain may be the president of such court-martial; and he shall not be under the rank of captain, except in the case of a district court-martial, where in the opinion of the officer who convenes the court, such opinion to be expressed in the order convening the court, and to be conclusive, a captain is not, having due regard to the public service, available.

Part I.  
ss. 48-49.

## NOTE.

With respect to warrants authorising the convening of general courts-martial, see s. 122 : and Ch. V, paras. 20-22.

The power to convene district courts-martial is not given specifically by warrant, but is an incident of the power to convene general courts-martial : in other words, an officer authorised to convene general courts-martial may either himself convene, or delegate to other officers power to convene, district courts-martial (s. 123). As to the duty of an officer before convening a court, and as to speedy convening of court, see Rule 17.

A convening officer can increase beyond the legal minimum the number of members to sit on a court-martial, but cannot decrease the number below that minimum; he must therefore take care to convene a court with not less than the minimum, otherwise the proceedings are void.

As to the eligibility of officers, and the disqualification by interest of officers, to serve on courts-martial, see s. 50 and Rule 19.

Officers of any corps may serve, but the court must not (save in certain exceptional cases) be composed exclusively of officers of the same regiment or battalion. Rule 20 (A).

As to trial of a member of the militia, yeomanry, or volunteers, see Rule 20 (B).

As to the rank of the members of a general court-martial, see paragraphs (3) and (7), and Rule 21. If any officer whose standing or rank is less than that required by this section is a member of the court, the proceedings will be invalid.

Paragraph (6). In the case of a warrant officer not holding an honorary commission, a district court-martial can only award the punishments specified in paragraph 2 (a) of s. 182.

Paragraph (9). The president must be appointed by name, and directly by the convening officer. The duties of the president are laid down in Rule 59.

Whenever a general officer or colonel is available, an officer of inferior rank is not to be appointed president of a general court-martial; and on the trial of the commanding officer of a corps, as many members as possible must be officers who have themselves held, or are holding, commands equivalent to that held by the accused. K.R., para. 578.

49. (1.) Where a complaint is made to any officer in command of any detachment or portion of troops in any country beyond the seas, or to the commanding officer of any corps or portion of a corps on active service, or to any officer in immediate command of a body of forces on active service, that an offence has been committed by any person subject to military law,

Field  
general  
courts-  
martial.

Then, if in the opinion of such officer it is not practicable that such offence should be tried by an ordinary general court-martial, it shall be lawful for him, although not authorised to convene general



Part I. courts-martial, to convene a court-martial, in this Act referred to  
s. 49. as a field general court-martial, for the trial of the person charged with such offence, provided as follows :

- (a.) An officer in command of a detachment or portion of troops not on active service shall not convene a field general court-martial for the trial of any person unless that person is under his command, nor unless the offence with which the person is charged is an offence against the property or person of an inhabitant of, or resident in, the country in which the offence is alleged to have been committed ;
- (b.) A field general court-martial shall consist of not less than three officers; unless the officer convening the same is of opinion that three officers are not available, having due regard to the public service, in which case the court-martial may consist of two officers ;
- (c.) The convening officer may preside, but he shall, whenever he deems it practicable, appoint another officer as president, who may be of any rank, but shall, if practicable in the opinion of the convening officer, be not below the rank of captain ;
- (d.) Where a field general court-martial consists of less than three officers, the sentence shall not exceed such field punishment as is allowed by this Act, or imprisonment.

(2.) Section forty-eight of this Act shall not apply to a field general court-martial, but sentence of death shall not be passed on any prisoner by a field general court-martial without the concurrence of all the members.

(3.) A field general court-martial may, notwithstanding the restrictions enacted by this Act in respect of the trial by court-martial of civil offences within the meaning of this Act, try any person subject to military law who is under the command of the convening officer and is charged with any such offence as is mentioned in this section, and may award for such offence any sentence which a general court-martial is competent to award for such offence : Provided always, that no sentence of any such court-martial shall be executed until confirmed as provided by this Act.

#### NOTE.

The object of this section is to provide for the speedy trial of offences committed abroad or on active service in cases where it is not practicable, with due regard to the interests of discipline and of the service, to try such offences by an ordinary general court-martial. A field general court-martial can try any offence committed on active service, but where troops are not on active service it can only be convened for the trial of offences against the property or person of some inhabitant of, or resident in, the country. See Rules 105-123 and notes.

Sub-section (3). *Restrictions enacted by this Act.* See s. 41 (a).

As to confirmation of sentence, s. 54 (1) (d).



50. (1.) The officers sitting on a court-martial may belong to the same or different corps, or may be unattached to any corps, and may try persons belonging or attached to any corps. Part I.  
ss. 50-51.

(2.) The officer who convened a court-martial shall not, save as is otherwise expressly provided by this Act, sit on that court-martial. Courts-martial in general.

(3.) Any of the following persons, that is to say—A prosecutor or witness for the prosecution of any accused, or the commanding officer of the accused within the meaning of the provisions of this Act which relate to dealing with a case summarily, or the officer who investigated the charges on which an accused is arraigned, shall not, save in the case of a field general court-martial, sit on the court-martial for the trial of such accused, nor shall he act as judge advocate at such court-martial.

#### NOTE.

Sub-section (1). If an officer is competent to sit on a court-martial, he is *qualified* to sit on any court of the same description, irrespective of his *obligation* to sit. A convening officer may, therefore, by arrangement, avail himself of the services of an officer not under his orders. A general or district court must, as far as seems to the convening officer practicable, be composed of officers of different corps, Rule 20 (A); and see as to the trial of a member of the militia, yeomanry, or volunteers, Rule 20 (B). See note to s. 47 (5). The definition of corps in s. 190 (15) includes the Royal Marines.

Sub-section (2). *Save as otherwise provided.* See s. 49 (1), (c), which enables the convening officer of a field general court-martial to preside, if it is impracticable to appoint another officer.

Sub-section (3). A member of the court or a judge advocate is a competent witness for the defence, but not for the prosecution. In the case of a field general court-martial, an officer is disqualified by Rule 106 (D) for serving, if he is provost-marshal, assistant provost-marshal, or prosecutor, or a witness for the prosecution.

*Within the meaning, &c., i.e., of s. 46 and Rule 129.*

*Investigated the charges.* The officer who investigated is usually the commanding officer of the accused; when he is not, he is equally excluded by these words. He has been defined as meaning the officer who, in a judicial capacity, sifted the evidence in such a way as to acquaint him with, and lead him to form a conclusion upon, the merits of the case, and does not include an officer through whose hands the charges passed merely formally or ministerially. Rule 19 (B) iii, however, now adds to the list of disqualified officers the officer who took down the summary of evidence, the company, &c., commander who conducted the preliminary inquiry, and any member of a court of inquiry which may have dealt with the case.

51. (1.) An accused about to be tried by any court-martial may object, for any reasonable cause, to any member of the court, including the president, whether appointed to serve thereon originally or to fill a vacancy caused by the retirement of an officer objected to, so that the court may be constituted of officers to whom the accused makes no reasonable objection. Challenges  
by accused.

(2.) Every objection made by an accused to any officer shall be submitted to the other officers appointed to form the court.

**Part I.** (3.) If the objection is to the president, such objection, if allowed  
**ss. 51-52.** by one-third or more of the other officers appointed to form the court, shall be allowed, and the court shall adjourn for the purpose of the appointment of another president.

(4.) If an objection to the president is allowed, the authority convening the court shall appoint another president, subject to the same right of the accused to object.

(5.) If the objection is to a member other than the president, and is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(6.) In order to enable an accused to avail himself of his privilege of objecting to any officer, the names of the officers appointed to form the court shall be read over in the hearing of the accused on their first assembling, and before they are sworn, and he shall be asked whether he objects to any of such officers, and a like question shall be repeated in respect of any officer appointed to serve in lieu of a retiring officer.

#### NOTE.

It will be observed that this section gives the accused an absolute right to a new president, if the challenge of the president by the accused is allowed by one-third of the officers appointed to form the court. A challenge of the president must be dealt with first.

As to challenges generally, see Rule 25 and note; as to adjourning for the purpose of appointing fresh members, and the power to convene another court, Rule 18; and as to challenges where a court is being sworn to try several persons, Rule 71 (A) (B). In the case of a field general court-martial, an objection to any officer will be allowed, if any member of the court thinks the objection reasonable, Rule 110 (B).

Adminis-  
tration of  
oaths.

**52. (1.)** An oath shall be administered by the prescribed person to every member of every court-martial before the commencement of the trial in the following form; that is to say,

"You do swear, that you will well and truly  
 "try the accused [*or* accused persons] before the court according to  
 "the evidence, and that you will duly administer justice according  
 "to the Army Act now in force, without partiality, favour, or  
 "affection, and you do further swear that you will not divulge the  
 "sentence of the court until it is duly confirmed, and you do further  
 "swear that you will not on any account at any time whatsoever  
 "disclose or discover the vote or opinion of any particular member  
 "of this court-martial, unless thereunto required in due course of  
 "law. So help you GOD."

(2.) An oath in the prescribed form or forms shall be administered by the prescribed person to the judge advocate or person officiating as judge advocate (if any), and also to every officer in attendance

on a court-martial for the purpose of instruction (if any), and also to every shorthand writer (if any), in attendance on the court-martial.

(3.) Every witness before a court-martial shall be examined on oath, which the president or other prescribed person shall administer in the prescribed form.

(4.) If a person by this Act required either as a member of, or person in attendance on, or witness before a court-martial, or otherwise in respect of a court-martial, to take an oath, objects to take an oath, or is objected to as incompetent to take an oath, the court, if satisfied of the sincerity of the objection or, where the competence of the person to take an oath is objected to, of the oath having no binding effect on the conscience of such person, shall permit such person instead of being sworn to make a solemn declaration in the prescribed form, and for the purposes of this Act such solemn declaration shall be deemed to be an oath.

#### NOTE.

Sub-section (1). *By the prescribed person.* This person is prescribed by Rule 26. The oath taken by members of the court binds them in their capacity of jurors to find a true verdict according to the evidence (discarding from their minds any private knowledge or information they may happen to possess), and in their capacity of judges to duly administer justice; as well as to keep secret the votes of members, and (until confirmed) the sentence of the court.

The oath taken by members of the court implies that, as a general rule, the opinions of the individual members ought not to be stated, and consequently the court ought not to disclose whether the decision was unanimous or by a majority. The decision is the decision of the court as a whole, and the fact of its being unanimous or not is usually immaterial. The qualification at the end of the oath, "unless thereto required in due course of law," only applies to such cases as those where members of the court are charged individually with partiality or bribery, and thus in a court of justice it would, or might, be necessary to make disclosures regarding individual votes to the court trying members so charged.

Rule 111 (A) provides for the mode of swearing the court in the case of a field general court-martial.

Sub-section (2). The forms of oaths for the judge advocate, for an officer attending for instruction, for a shorthand writer and an interpreter, and the person to administer them, are prescribed by Rule 27; and for an interpreter at a field general court-martial by Rule 111 (B).

Sub-section (3). The form of oath for a witness, and the person to administer it, are prescribed by Rule 82, and in the case of a field general court-martial by Rule 114.

Sub-section (4). The form of solemn declaration is prescribed by Rule 28. As to swearing a person according to his own religion, see Rule 30; and in the case of a field general court-martial, Rule 115.

The practice followed in the law courts of any colony or foreign country as to the mode of swearing or taking the affirmation of natives should usually be adopted.

For punishment of perjury committed by a witness subject to military law, see s. 29; by a civilian, see s. 126 (2).

Part I. **s. 53.** 53. (1.) If a court-martial after the commencement of the trial is, by death or otherwise, reduced below the legal minimum, it shall be dissolved.

Procedure.

(2.) If after the commencement of the trial the president dies or is otherwise unable to attend, and the court is not reduced below the legal minimum, the convening authority may appoint the senior member of the court, if of sufficient rank, to be president, and the trial shall proceed accordingly; but if he is not of sufficient rank the court shall be dissolved.

(3.) If, on account of the illness of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(4.) Where a court-martial is dissolved under the foregoing provisions of this section the accused may be tried again.

(5.) The president of any court-martial may, on any deliberation amongst the members, cause the court to be cleared of all other persons.

(6.) The court may adjourn from time to time.

(7.) The court may also, where necessary, view any place.

(8.) In the case of an equality of votes on the finding the accused, shall be deemed to be acquitted. In the case of an equality of votes on the sentence, or any question arising after the commencement of the trial except the finding, the president shall have a second or casting vote.

(9.) When a court-martial recommends a person under sentence to mercy, such recommendation shall be attached to and form part of the proceedings of the court, and shall be promulgated and communicated to the person under sentence, together with the finding and the sentence.

#### NOTE.

Sub-section (1). In the event of the dissolution of the court before a finding of acquittal, or a finding of guilty and sentence thereon, the accused may be tried again: sub-section (4), Rule 66 (B); but it may frequently be inexpedient to convene a fresh court for such trial, especially where the accused has been for some time under arrest or in confinement.

Sub-section (2). *Is unable to attend.* The court cannot proceed at all without a president, and in the event of his absence must adjourn till he can attend, or till his place is supplied by the convening authority: see Rule 65 (B).

Sub-section (3). *Illness of the accused.* A medical certificate should always, where possible, be obtained, stating that the illness of the accused renders his presence in court dangerous to himself or others, and also the time when, in the opinion of the medical officer, the accused will be able to be present.

*Impossible to continue.* This means to continue within a reasonable time having regard to all the circumstances.

Sub-section (5). *Cause the court to be cleared.* If more convenient the court may withdraw for deliberation: see Rule 63.

Sub-section (6). *Adjourn.* See as to adjournment, Rule 65.

Sub-section (7). *View.* The convening officer cannot depute so many members as he might think fit, to view a place, as the view must be in open

court (Rule 63 (B)), *i.e.*, in the presence of all the members, the prosecutor, and the accused. Part I.

Sub-section (8). *Acquitted.* In such a case the acquittal, if it relates to all the charges, must be at once pronounced in open court, and the accused must be discharged. Section 54 (3). ss. 53-54.

Sub-section (9). As a recommendation to mercy is part of the proceedings, any expression of opinion in it in relation to the finding must be read with, and as part of, the finding.

Where, in a recommendation to mercy, a court expressed an opinion inconsistent with the guilt of the person under sentence, for instance, where the charge was for striking a superior, and the court stated their opinion that the accused "did not intend to strike," it was held that it must be treated as an acquittal, the intent being an element of the offence.

As to the exceptional character of recommendations to mercy see ch. V, para. 88.

54. (1.) The following authorities shall have power to confirm the findings and sentences of court-martial; that is to say, Confirmation, revision, and approval of sentences.

(a.) In the case of a regimental court-martial, the convening officer or officer having authority to convene such a court-martial at the date of the submission of the finding and sentence thereof:

(b.) In the case of a general court-martial, His Majesty, or some officer deriving authority to confirm the findings and sentences of general courts-martial immediately or mediately from His Majesty:

(c.) In the case of a district court-martial, an officer authorised to convene general courts-martial, or some officer deriving authority to confirm the findings and sentences of district courts-martial from an officer authorised to convene general courts-martial:

(d.) In the case of a field general court-martial, an officer authorised to confirm the findings and sentences of general courts-martial for the trial of offences in the force of which the detachment or portion of troops under the command of the convening officer forms part, or where the offence was committed on active service, any such officer as may under the rules made in pursuance of this Act be authorised to confirm the findings and sentences of the field general court-martial awarding the sentence: Provided that a sentence of death or penal servitude awarded by a field general court-martial shall not be carried into effect unless or until it has been confirmed by the general or field officer commanding the force with which the person under sentence is present at the date of his sentence.

(2.) The authority having power to confirm the finding and sentence of a court-martial may send back such finding and sentence, or either of them, for revision once, but not more than once, and it shall not be lawful for the court on any revision to receive any



Part I.  
s. 54.

additional evidence ; and where the finding only is sent back for revision, the court shall have power without any direction to revise the sentence also. In no case shall the authority recommend the increase of a sentence, nor shall the court-martial on revisal of the sentence, either in obedience to the recommendation of an authority, or for any other reason, have the power to increase the sentence awarded.

(3.) The finding of acquittal, whether on all or some of the offences with which the accused is charged, shall not require confirmation or be subject to be revised, and if it relates to the whole of the offences shall be pronounced at once in open court, and the accused shall be discharged.

(4.) A member of a court-martial shall not have authority to confirm the finding or sentence of that court-martial, and where a member of a court-martial becomes confirming officer he shall refer the finding and sentence of the court-martial to a superior authority competent to confirm the findings and sentences of the like description of courts-martial, and that authority shall, for the purposes of this Act, be deemed to be in that instance the confirming authority ; and where a court-martial is held in a colony, and there is no such superior authority in that colony, the governor of that colony shall have power to confirm the finding and sentence of such court-martial in like manner in all respects as if he were such superior authority as above mentioned. Provided that where a member of a field general court-martial trying an accused would but for his being a member of the court have power to confirm the finding and sentence of the court, and is of opinion that it is not practicable, having due regard to the public service, to delay the case for the purpose of referring it to any other officer, he may confirm the finding and sentence.

(5.) An officer having authority to confirm the finding and sentence of a court-martial may withhold his confirmation wholly or partly, and refer such finding and sentence, or the part not confirmed, to any superior authority competent to confirm the findings and sentences of the like description of courts-martial, and that authority shall for the purpose of this Act be deemed to be in that instance and to the extent of such reference the confirming authority.

(6.) Subject to the provisions of this Act with respect to the finding of acquittal, the finding and sentence of a court-martial shall not be valid except in so far as the same may be confirmed by an authority authorised to confirm the same.

(7.) Sentence of death when passed in a colony shall not, unless passed in respect of an offence committed on active service, be carried into effect unless, in addition to the confirmation otherwise required by this Act, it is approved by the governor of the colony.

(8.) Sentence of death when passed in India in respect of the



offence of treason or murder shall not (except where the offence was committed on active service) be carried into effect unless, in addition to the confirmation otherwise required by this Act, it is approved by the Governor-General.

(9.) When a person subject to military law is convicted of manslaughter or rape, or any other civil offence under the section of this Act relating to the trial by court-martial of civil offences, and is sentenced to penal servitude, such sentence shall not be carried into execution unless, in addition to the confirmation otherwise required by this Act, it is approved, if the offender has been tried in India, by the Governor-General, or, if he has been tried in a colony, by the Governor of the colony.

## NOTE.

As to confirmation and revision generally, see ch. V paras. 89-99, and as to field general court-martial, Rule 120 and note. Confirmation is complete when the proceedings are promulgated.

If proceedings are confirmed in error by an officer not having power to confirm, his act and the subsequent promulgation are null, and it is open to the proper authority to confirm.

Sub-sections (2) and (3). The effect is that revision, except for curing legal defects in the finding or sentence, can only be used for acquitting the accused or mitigating the sentence; inasmuch as revision can only be ordered in case of conviction, and if it is ordered the sentence cannot be increased. See Rule 51 and note.

The Act, by declaring that an acquittal on a charge shall not require confirmation, makes the decision of the court on that charge, both as regards the facts and the law, absolute. In such a case the confirming officer must not annex to the proceedings any remarks on the conclusion of the court; at the same time, if he is of opinion that the court has been guided by principles detrimental to the discipline of the army, or that otherwise the case requires notice, he should report accordingly to superior military authority. See Rule 51 (A) and K.R., para. 590.

Where a finding on being sent back for revision is varied in any material respect by the court, a new sentence (not, however, necessarily differing from the original sentence) must be passed, for on the original finding being revoked, the sentence based upon it falls. Where a new sentence is not passed, the accused is not legally under any sentence.

Sub-section (4). See note to Rule 97. *Colony*. See the definition, which includes Cyprus and British protectorates, in s. 190 (23).

Sub-section (5). See note to Rule 97 (A).

Sub-section (6). The result of this sub-section is that if a finding of conviction is not confirmed it is invalid (see also Rule 120 (A), and Ch. V, para. 5), consequently there is no conviction, and the accused has not been convicted by a court-martial for the purpose either of any subsequent trial or of any entry in the conduct book. See s. 157 and note, and Rule 56.

It has been ruled that confirmation ought to be withheld in the following cases:—

Where the provisions of s. 47 in the case of a regimental, or those of s. 48 in that of a general or district court-martial, and in either case those of ss. 50, 51, or 52 have been contravened.

Part I. Where evidence legally inadmissible has been admitted against the accused, and without such evidence a conviction is not justified.

ss. 54-56. Where the accused has been unduly restricted in his defence.

Where a finding of guilty has been come to with the exception of certain words of the charge, and these words so far describe the essence of the offence, that the finding, with the words omitted, fails to disclose an offence of which the court could legally have convicted.

Where a special finding of guilty fails to disclose an offence of which the court might have legally convicted.

Where the charge is bad in law, even when the accused has pleaded guilty.

Where there has been such a deviation from the rules of procedure that injustice has been done to the accused.

Sub-section (7). *Active service.* See the definition in s. 189.

Sub-sections (8) and (9). *India.* See the definition in s. 190 (21).

Where an offender was tried within the limits of a presidency, the power of approval was formerly vested in the governor of the presidency, but this power was abolished by the Madras and Bombay Armies Act, 1893.

*Civil offence.* See s. 41.

55. [Section 55 (Summary court-martial) was repealed by s. 9 of the Army (Annual) Act, 1893.]

Conviction  
of less  
offence  
per-  
missible on  
charge of  
greater.

56. (1.) An accused charged before a court-martial with stealing may be found guilty of embezzlement or of fraudulently misapplying money or property.

(2.) An accused charged before a court-martial with embezzlement may be found guilty of stealing or fraudulently misapplying money or property.

(3.) An accused charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(4.) An accused charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave.

(5.) An accused charged before a court-martial with any other offence under this Act may, on failure of proof of an offence being committed under circumstances involving a higher degree of punishment, be found guilty of the same offence as being committed under circumstances involving a less degree of punishment.

#### NOTE.

This section will often prevent a failure of justice by permitting a person charged with one of the offences mentioned in the section to be found guilty of a cognate offence.

Moreover, a man charged with an offence committed under circumstances involving a higher degree of punishment may be found guilty of the same offence under circumstances involving a less degree of punishment.

For example, a man charged with striking his superior officer in the execution of his office may be convicted of striking his superior officer; and a man charged with an offence committed on active service may be found guilty of the same offence committed not on active service; or, again, a man charged with wilfully allowing the escape of a person in custody may be found guilty of allowing his escape without reasonable excuse. The converse, of

course, is not allowed; that is to say, a person charged with an offence cannot be convicted of a greater offence of the same class. Part I.

In practice it will usually be expedient to prefer alternative charges, one charging the greater and the other the less offence, rather than to rely on this section. See Rules, Appendix I, Note as to use of Forms of Charges (6), p. 530 below.

ss. 56-57.

But except in the cases specified in this section a court has no power to find a person guilty of any offence except that with which he is charged. A court, however, may (as allowed by Rule 41 (C)) find a person guilty of a charge with the exception of certain words or with certain immaterial variations, and this finding will be valid so long as in its reduced or varied form it discloses an offence under the Act.

#### EXECUTION OF SENTENCE.

57. (1.) The confirming authority may, when confirming the sentence of any court-martial, mitigate or remit the punishment thereby awarded, or commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said court-martial, or if such punishment is death awarded for the offence of murder, then for penal servitude or such less punishment as is in this Act mentioned. The confirming authority may also suspend for such time as seems expedient the execution of a sentence. Commutation and remission of sentences.

(2.) When a sentence passed by a court-martial has been confirmed, the following authorities shall have power to mitigate or remit the punishment thereby awarded, or to commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said court-martial, or if such punishment is death awarded for the offence of murder, then for penal servitude or such less punishment as in this Act mentioned; that is to say,

(a.) As respects persons undergoing sentence in any place whatever, His Majesty or the Commander-in-Chief or the officer commanding the district or station where the prisoner subject to such punishment may for the time be, or any prescribed officer; and

(b.) As respects persons undergoing sentences in India, the Commander-in-Chief of the forces in India, or such other officer as the Commander-in-Chief of the forces in India, with the approval of the Governor-General of India in Council, may appoint; and

(c.) As respects persons undergoing sentences in any colony, the officer commanding the forces in that colony; and

(d.) As respects persons undergoing sentences in any place not in the United Kingdom, India, or a colony, the officer commanding the forces in such place.

(3.) Provided that the power given by this section shall not be exercised by an officer holding a command inferior to that of the authority confirming the sentence, unless such officer is authorised

Part I. by such confirming authority or other superior military authority to exercise such power.

s. 57.

(4.) An authority having power under this section to mitigate, remit, or commute any punishment may, if it seem fit, do all or any of those things in respect of a person subject to such punishment.

(5.) The provisions of this Act with respect to an original sentence of penal servitude, imprisonment, or detention shall apply to a sentence of penal servitude, imprisonment, or detention imposed by way of commutation.

#### NOTE.

See Ch. V, para. 98, and as to diminution of sentence for offences in several charges, where the finding on one or more of them is not confirmed, see Rule 54. See also as to duty of confirming officer, K.R., paras. 587-591.

*Mitigation* is the awarding a less amount of the same species of punishment, as, for example, by reducing the length of imprisonment to which an offender has been sentenced; and is in effect equivalent to a remission of part of the sentence.

*Remission* may be remission of the whole or of part of the sentence; thus a sentence of imprisonment with hard labour may be remitted altogether, or a portion of the term, or the hard labour may be remitted. As to notification of remission of imprisonment or detention, K.R., para. 632.

*Commutation* is changing the description of punishment by awarding a punishment lower in the scale of punishments in s. 44—as imprisonment in lieu of penal servitude—or dismissal in lieu of cashiering—or detention in lieu of imprisonment; but the effect of s. 44 (1A) is that imprisonment can only be commuted to an equal or shorter term of detention, *e.g.*, the commutation of three months imprisonment to four months detention would be illegal.

Suspension of the execution of a sentence, which can only take effect after confirmation, does not postpone the commencement of any term of penal servitude, imprisonment, or detention.

The powers conferred by this section may be exercised by the confirming authority, as such, under sub-section (1), only when confirming the sentence: after promulgation, when the confirmation is complete, the power of the confirming authority in that capacity ceases, and the above powers can only be exercised by the authorities specifically mentioned in sub-section (2), or by the other authorities prescribed for the purpose by Rule 126 (C), and (under subs. (3)) they cannot be exercised by any officer holding a command inferior to the confirming authority without leave from that authority or some other superior authority.

The confirming authority as such cannot commute a punishment into general service. See s. 83 (7) and note.

For definitions of India and colony, see s. 190 (21) and (23).

The section allows an authority to commute a punishment “for any less punishment or punishments” to which the offender might have been sentenced. As, however, there is no standard of comparison between one punishment and two or more other punishments, and as it is necessary that the commuted sentence should be less than the original sentence, the validity of the commutation of one punishment to two or more punishments is liable to be called in question. Partial commutation by the authority of any one

punishment by the substitution for a portion thereof of another punishment is illegal. Thus, where in a case of "losing by neglect" a court passed a sentence of 84 days' imprisonment, but omitted to pass a sentence of stoppage, it was ruled that the confirming authority could not commute a portion of the imprisonment to the stoppages which the court might have awarded.

Part I.  
ss. 57-58.

The penal servitude, imprisonment, or detention, under commutation, must commence on the date of the original sentence, even though that sentence was not one of penal servitude, imprisonment, or detention, as the case may be.

Sub-section (2) (b). Paragraph (b) in its present form gives effect to the Madras and Bombay Army Act, 1893, which abolished the office of provincial Commander-in-Chief and enacted that anything to be done to, by, or before, any of the officers whose office was abolished by the Act, might be done to, by, or before, such officer as the Commander-in-Chief in India, with the approval of the Governor-General in Council, might appoint.

58. When a person subject to military law is convicted by a court-martial, whether in the United Kingdom, or elsewhere, either within or without His Majesty's dominions, and is sentenced to penal servitude, such conviction and sentence shall be of the same effect as if such person (in this Act referred to as a military convict) had been convicted in the United Kingdom of an offence punishable by penal servitude and sentenced to penal servitude by a competent civil court, and all enactments relating to a person sentenced to penal servitude by a competent civil court shall, so far as circumstances admit, apply accordingly.

Effect of sentence of penal servitude.

#### NOTE.

Sections 58 to 62 relate to penal servitude, and provide separately for the execution of sentences of penal servitude passed in the United Kingdom, in India or a colony, and in a foreign country.

Before the passing of the Army Discipline and Regulation Act, 1879, a convict sentenced to penal servitude in India or a colony might be compelled to undergo a portion of his sentence in the country where he was sentenced. The effect of these sections and of the proviso to s. 131 is, that wherever a sentence of penal servitude is passed, the convict (subject to the exceptions mentioned in the proviso and the note to s. 131), must, as soon as practicable, be brought to the United Kingdom to undergo his sentence in some prison in which a prisoner sentenced to penal servitude in the United Kingdom can be confined. (See the definition of "penal servitude prison" in s. 62 (1)).

These sections further enable a convict to be discharged by certain military authorities at any time before he reaches his penal servitude prison, and also provide for his conveyance in custody from the place where he is sentenced to penal servitude, however distant, until his arrival in the prison where he is to undergo his sentence.

In the United Kingdom, though he may be kept in military custody till sent to a penal servitude prison, his period of military custody will necessarily be short, as his commanding officer or other military authority should commit him, without unnecessary delay after the promulgation of the sentence, to some public prison. He then comes under the jurisdiction of the Home Secretary, and is out of the jurisdiction of the military authorities.

Abroad, on the other hand, a soldier under sentence of penal servitude must necessarily be kept for some length of time in intermediate custody, which may be either military custody or civil custody, and he may be moved from



Part I. one to the other as occasion requires. When in civil custody he must be kept  
 s. 58-60. in an "authorised prison" (s. 62), unless it is not practicable, in which case (s. 60 (5)) he may be confined temporarily in any civil prison with the assent of the authority having jurisdiction over the prison.

For commencement of term of penal servitude, see s. 68.

The provisions of the Act will continue to apply to a person sentenced to penal servitude during the term of his sentence, though he has been discharged or dismissed from His Majesty's service; s. 158.

Execution  
of sentences  
of penal  
servitude  
passed in  
the United  
Kingdom.

59. (1.) Where a sentence of penal servitude is passed by a court-martial in the United Kingdom, the military convict on whom such sentence has been passed, shall, as soon as practicable, be transferred to a penal servitude prison to undergo his sentence according to law, and until so transferred shall be kept in military custody.

(2.) The order of the committing authority (hereafter in this section mentioned) shall be a sufficient warrant for his transfer to a penal servitude prison.

(3.) At any time before his arrival at a penal servitude prison, the discharging authority (hereafter in this section mentioned) may by order discharge the military convict.

(4.) Any one or more of the following officers shall be the committing authority for the purposes of this section, namely,—

(a.) The Commander-in-Chief;

(b.) The Adjutant-General;

(c.) The commanding officer of the military convict; and

(d.) Any other prescribed officer.

(5.) Any one of the following officers shall be the discharging authority for the purposes of this section, namely,—

(a.) The Commander-in-Chief;

(b.) The Adjutant-General; and

(c.) Any other prescribed officer.

#### NOTE.

Sub-section (1). *Penal servitude prison.* For definition see s. 62.

Sub-section (4). *Commanding Officer.* This means the commanding officer as defined by Rule 129. See K.R. para. 456.

*Prescribed officer.* See Rule 126 (A) for the other officers who have been prescribed as committing authorities for the purposes of this section.

For general provisions as to the form of orders of military authorities, see s. 172.

For form of order of commitment, see Rules, App. III, Form A, p. 585 below; and see generally K.R., paras. 600-606.

Sub-section (5). The military authorities can only discharge a military convict before he reaches a penal servitude prison and not afterwards.

No officer has been prescribed as discharging authority.

Execution  
of sentence  
of penal  
servitude  
passed in  
India or  
colony.

60. (1.) Where a sentence of penal servitude is passed by a court-martial in India or any colony, the military convict on whom such sentence has been passed shall, as soon as practicable, be transferred to a penal servitude prison to undergo his sentence according to law.

(2.) The order of the committing authority (hereafter in this



section mentioned) shall be a sufficient warrant for his transfer to a penal servitude prison.

(3.) The military convict during the period which intervenes between the passing of his sentence and his arrival at the penal servitude prison (in this section referred to as the term of his intermediate custody) shall be deemed to be in legal custody.

(4.) The military convict during his term of intermediate custody may be kept in military custody or in civil custody, or partly in one description of custody and partly in the other, and may from time to time be transferred from military custody to civil custody and from civil custody to military custody as occasion may require, and may, during his conveyance from place to place, or when on board ship or otherwise, be subjected to such restraint as is necessary for his detention and removal.

(5.) "Civil custody," for the purposes of this section, means custody in any authorised prison; nevertheless, where it is not practicable to place the military convict in an authorised prison, he may, by way of civil custody, be confined temporarily in any other prison with the assent of the authority having jurisdiction over that prison.

(6.) The military convict whilst in any prison in which he may legally be placed may be dealt with, in respect of hard labour and otherwise, according to the rules of that prison.

(7.) An order of the removing authority (hereafter in this section mentioned) shall be a sufficient authority for the transfer of the military convict from military custody to civil custody, and from civil custody to military custody, and his removal from place to place, and for his detention in civil custody, and generally for dealing with such convict in such manner as may be thought expedient during the term of his intermediate custody.

(8.) The removing authority during the term of the intermediate custody of the military convict may from time to time by order provide for his being brought before a court-martial, or any civil court, either as a witness or for trial or otherwise; and an order of such authority shall be a sufficient warrant for the delivering him into military custody, and detaining him in custody until he can be returned, and for returning him to the place from whence he is brought, or to such other place as may be determined by the removing authority.

(9.) Any directions of the removing authority relating to the mode in which the military convict is to be dealt with during the term of his intermediate custody may be contained in the same order or in several orders; and if the orders are more than one, they may be by different officers and at different times.

(10.) At any time before the military convict arrives at a penal servitude prison, the discharging authority (hereafter in this section mentioned) may by order discharge the military convict.

(11.) Any one or more of the following officers shall be the

Part I. committing authority for the purposes of this section; that is to say,  
 s. 60.

(a.) In India—

(i.) The Commander-in-Chief of the forces in India;

\* \* \* \* \*

(iii.) The Adjutant-General in India;

\* \* \* \*

(b.) In a colony, the officer commanding the forces in that colony; and

(c.) In any case, whether in India or in a colony, the prescribed officer.

(12.) Any one or more of the following officers shall be the removing authority for the purposes of this section; that is to say,

(a.) Any officer in this section named as the committing authority; also

(b.) The officer commanding the military district or station where the military convict may for the time being be, also

(c.) Any other prescribed officer.

(13.) Any of the following officers shall be the discharging authority for the purposes of this section; that is to say,

(a.) The officer who confirmed the sentence; also

(b.) Any officer in this section named as the committing authority; also

(c.) Any other prescribed officer.

#### NOTE.

Sub-section (1). For definition of India and colony, see s. 190 (21) and (23); but it must be recollected that for the purpose of this section and the other provisions relating to the execution of sentences of penal servitude, the Channel Islands and the Isle of Man are deemed to be colonies; section 187 (2).

As to removal to United Kingdom of prisoners sentenced to penal servitude in India or a colony, see the proviso to s. 131.

Sub-section (5). For definition of *authorised prison*, see s. 62 (2).

Sub-section (8). The statute 43 Geo. III, c. 140, empowers any of His Majesty's judges to award a writ of *habeas corpus* for bringing any prisoner detained in any prison in England (whether subject to military law or not) before a court-martial for the purpose of giving evidence; and s. 9 of 16 & 17 Vict. c. 30, empowers any of His Majesty's judges to issue a warrant or order for the like purpose, and also for the purpose of bringing up a prisoner to give evidence before a civil court; and s. 11 of 61 & 62 Vict. c. 41, empowers a Secretary of State to order the production of a prisoner at any place where his presence is required in the interest of justice or for the purpose of any public inquiry. This sub-section enables an offender sentenced to penal servitude to be brought up by order of the military authority either before a court-martial or a civil court to give evidence, during the interval between the passing of the sentence and his arrival at the penal servitude prison.

Sub-sections (11), (12), (13). *Prescribed officer*. See Rule 126 (A), for the other officers who have been prescribed as committing authorities for the purpose of this section.

No officer has been prescribed as removing or discharging authority under sub-sections (12) and (13).

As to discharge of convicts, see note to subss. (5) of s. 59.

For general provisions as to the form of orders of military authorities, see s. 172.

For form of order of commitment, see Rules, App. III, Form B, p. 585 below; and see also K.R., paras. 600-606.

61. (1.) Where a sentence of penal servitude is passed by a court-martial in any foreign country, the military convict on whom such sentence has been passed shall, as soon as practicable, be transferred to a penal servitude prison for the purpose of undergoing his sentence according to law, and, until so transferred, may be kept in military custody.

Execution of sentences of penal servitude passed in a foreign country.

(2.) The order of the committing authority (hereafter in this section mentioned) shall be a sufficient warrant for the transfer of the military convict to a penal servitude prison.

(3.) If at any time before his arrival in the United Kingdom the military convict is brought into India or any colony, he may be dealt with by the competent military authority in India or such colony in the same manner in all respects as if he had been there sentenced by court-martial to penal servitude.

(4.) The military convict may at any time before he arrives at any place in the United Kingdom, India, or any colony, be discharged by the discharging authority (hereafter in this section mentioned) having jurisdiction in any place where the military convict may for the time being be.

(5.) Any one or more of the following officers shall be the committing authority for the purposes of this section; that is to say,

(a.) The officer commanding the army or force with which the military convict was serving at the time of his being sentenced;

(b.) The officer who confirmed the sentence of the court;

(c.) Any other prescribed officer;

(6.) Any committing authority under this section shall also be the discharging authority for the purposes of this section.

#### NOTE.

Sub-section (1). *Foreign country*. For definition see s. 190 (24).

Sub-section (3). See s. 131, and for definition of India and colony see s. 190 (21) and (23); see also s. 187 (2) as to Isle of Man and Channel Islands.

*Prescribed officer*. See Rule 126 (A). An officer who is a committing officer under Rule 126 does not thereby become a discharging authority for the purposes of this section; see Rule 126 (A) at end.

For general provisions as to the form of orders of military authorities, see s. 172.

For form of order of commitment, see Rules, App. III, Form B, p. 585 below; and also see K.R., paras. 600-606.

62. (1.) A penal servitude prison for the purposes of the provisions of this Act relating to penal servitude means any prison or place in which a prisoner sentenced to penal servitude by a civil court

General provisions applicable to penal servitude.

Part I in the United Kingdom can for the time being be confined, either  
 ss. 62-63. permanently or temporarily.

(2.) An "authorised prison" for the purposes of the provisions of this Act relating to penal servitude means any prison in India or any colony which the Governor-General of India or the Governor of such colony may, with the concurrence of a Secretary of State, have appointed as a prison in which military convicts may, during the period of their intermediate custody, be confined.

(3.) After a military convict has arrived at a penal servitude prison to undergo his sentence, he shall be dealt with in the like manner as an ordinary civil prisoner under sentence of penal servitude.

NOTE.

Sub-section (1). See proviso to s. 131.

Execution  
of sentences  
of imprison-  
ment and  
detention.

63. (1.) Where a sentence of imprisonment is passed by court-martial, the person on whom that sentence has been passed (in the provisions of this Act relating to imprisonment referred to as a military prisoner) shall undergo the term of his imprisonment either in military custody, or in a detention barrack, or in a public prison, or partly in one way and partly in another, and where a sentence of detention is passed by a court-martial or a commanding officer, the person on whom that sentence has been passed (in the provisions of this Act relating to detention referred to as a soldier undergoing detention) shall undergo the term of his detention either in military custody or in a detention barrack, or partly in one way and partly in the other, but not in a prison.

(2.) Any person liable to be imprisoned in a military prison may be confined in a detention barrack.

(3.) The order of the committing authority hereafter mentioned shall be a sufficient warrant for the transfer of a military prisoner to a public prison, or a detention barrack, or a soldier undergoing detention to a detention barrack.

(4.) A military prisoner while in a public prison shall be confined, kept to hard labour, and otherwise dealt with in the like manner as an ordinary prisoner under a like sentence of imprisonment; and where the hospital or place for the reception of sick persons in a public prison or a detention barrack is detached from the prison or detention barrack, a military prisoner or a soldier undergoing detention may be detained in that hospital or place, and conveyed to or from the same as circumstances require.

(5.) A military prisoner or a soldier undergoing detention during his conveyance from place to place, or when on board ship or otherwise, may be subjected to such restraint as is necessary for his safe custody and removal.

(6.) The discharging authority hereafter mentioned may, at any time during the period of the imprisonment of a military prisoner

or of the detention of a soldier undergoing detention, by order discharge the prisoner or soldier.

(7.) The committing authority or any other prescribed authority may at any time by order remove a military prisoner from one public prison or detention barrack to another prison or detention barrack, or a soldier undergoing detention from one detention barrack to another, so that he be not removed from a prison or detention barrack in the United Kingdom to a prison or detention barrack elsewhere.

(8.) The removing authority hereafter mentioned may at any time during the period of the imprisonment of a military prisoner or of the detention of a soldier undergoing detention, from time to time by order provide for his being brought before a court-martial, or any civil court, either as a witness, or for trial or otherwise, and an order of such authority shall be a sufficient warrant for delivering him into military custody and detaining him in custody until he can be returned and for returning him to the place from whence he is brought, or to such other place as may be determined by the removing authority.

## NOTE.

Sections 63 to 66 provide for the execution of sentences of imprisonment, and of sentences of detention.

The effect of the provisions is that a person under sentence of imprisonment, if sentenced in the United Kingdom, may be kept either in military custody, or in a detention barrack, or in a public prison—that is to say, any prison in the United Kingdom in which prisoners can be confined under a sentence of a civil court, see s. 64 (1); or in a military prison, that is to say, any building set apart as such by the Secretary of State under s. 133.

If sentenced in India or a colony, he may be kept in military custody, or in a detention barrack, or in some “authorised prison” in the country where sentenced, *i.e.*, a civil prison appointed as a prison for military prisoners, with the concurrence of the Secretary of State, if in India by the Governor-General, and if in a colony by the Governor of the colony (s. 65 (2)); or in a military prison—that is to say, any building set apart as such in India by the Governor-General, and in a colony by the Secretary of State, under s. 133.

If sentenced in a foreign country, then if and as soon as he is brought into the United Kingdom, India, or any colony, the provisions of the Act apply as if he had been sentenced in the United Kingdom, in India, or a colony, as the case may be; s. 66.

A prisoner may be removed from a prison or detention barrack out of the United Kingdom to a prison or detention barrack in the United Kingdom, and from one public prison or detention barrack to another public prison or detention barrack in the United Kingdom (sub-section (7)); but he cannot be removed from a prison or detention barrack in the United Kingdom to a prison or detention barrack elsewhere (sub-section (7)); and if he has remained in military custody and not been committed to a prison or detention barrack in the United Kingdom, and is removed from the United Kingdom, he cannot be committed to a prison or detention barrack elsewhere. Prisoners, therefore, in the United Kingdom, if required to be removed, can only be removed under s. 67. A prisoner sentenced in India or a colony may be



Part I. removed to a detention barrack wherever situate (sub-section (7)), or to a military prison wherever situate if allowed by regulation (see Rule 130), but  
 s. 63. can only be removed to an "authorised prison" in another colony if such prison has been "prescribed" for this purpose by a rule (s. 65 (1) (c), Rule 130). With reference to these sections, it must be recollected that under s. 187 (2) the Isle of Man and Channel Islands, and under s. 190, Cyprus, are for these purposes colonies.

Where a unit moves from one colony to another and takes its prisoners with it, they cannot be committed under their old sentence to a prison at the place of destination of the regiment unless such prison has been prescribed, i.e., allowed by Rule, or is a military prison, and in the latter case the regulations on the subject must be observed.

As regards a soldier sentenced to detention, the effect of the provisions is that he may be kept either in military custody or in a detention barrack, and may be removed from any detention barrack to any other wherever situate, except that he cannot be removed from a detention barrack in the United Kingdom to one elsewhere (sub-section (7)).

As to a prisoner sentenced to more than twelve months' imprisonment or detention in India or a colony being sent home unless the court or confirming authority has for special reasons otherwise ordered, or unless he is a person to whom a declaration of the Secretary of State, made under that section is applicable, see s. 131.

Sub-section (1). *Military custody.* This expression includes branch detention barracks, and a soldier may be ordered to perform hard labour in them; but a soldier under sentence exceeding the limit for the time being prescribed for sentences to be passed in detention rooms or in branch detention barracks, must only be committed to such detention rooms or barracks, pending his removal to a civil prison, or a military prison, or a detention barrack. K.R., para. 607, and see paras. 647-660.

*Sentence of imprisonment passed by court-martial.* It must be remembered that a regimental court-martial has no longer power to pass sentences of imprisonment: see s. 47 (5) and notes.

Sub-section (2). Under this provision it will be possible to send naval prisoners to a detention barrack.

Sub-section (6). *Discharging authority.* It will be observed that the discharging authority under this section will sometimes have no power to remit the sentence under s. 57. It is, however, desirable that a prisoner or soldier undergoing detention should not be discharged before the expiration of his sentence without his sentence being remitted. An officer, therefore, who has power to discharge a person, but not to remit the sentence, should apply to some authority having power to remit the sentence, and obtain that remission before he orders the discharge. If, in a case of necessity, he discharges any person under sentence before making such application, he should apply immediately for the remission of the sentence.

An escaped prisoner or soldier under sentence of detention may, when captured, be recommitted to prison or a detention barrack to undergo the remainder of his sentence; but if it is desired to punish him for the escape, a charge must be preferred, and he must be tried under s. 22.

*Committing authority—Discharging authority—Removing authority.* See s. 64.

See, generally, as to military prisoners, K.R., paras. 607-660.

For forms of order of commitment, &c., relating to military prisoners and soldiers undergoing detention respectively, see Rules, App. III, Forms C—U, pp. 587-598 below. K.R., paras. 607-617.



Supple-  
mental pro-  
visions as to  
sentences of  
imprison-  
ment or  
detention  
passed  
or being  
undergone  
in the  
United  
Kingdom.

64. Where a sentence of imprisonment or detention is passed or is being undergone in the United Kingdom, then for the purposes of the provisions of this Act relating to imprisonment or detention, as the case may be—

- (1.) The expression "public prison" means any prison in the United Kingdom in which offenders sentenced by a civil court to imprisonment can for the time being be confined.
- (2.) Any one or more of the following officers shall be the committing authority :
  - (a.) The Commander-in-Chief ;
  - (b.) The Adjutant-General ;
  - (c.) The officer who confirmed the sentence ;
  - (d.) The commanding officer of the military prisoner or soldier undergoing detention ; and
  - (e.) Any other prescribed officer.
- (3.) Any one of the following officers shall be the discharging authority :
  - (a.) The Commander-in-Chief ;
  - (b.) The Adjutant-General ;
  - (c.) The officer commanding the military district in which the prisoner or soldier undergoing detention may be ;
  - (d.) The officer who confirmed the sentence ;
  - (e.) Any other prescribed officer ; also,
  - (f.) Where the sentence was passed by the commanding officer, the commanding officer.
- (4.) Any one or more of the following officers shall be the removing authority :
  - (a.) The Commander-in-Chief ;
  - (b.) The Adjutant-General ;
  - (c.) The officer commanding the military district in which the prisoner or soldier undergoing detention may be ;
  - (d.) Any other prescribed officer ; also,
  - (e.) Where the sentence was passed by the commanding officer, the commanding officer.

## NOTE.

Paragraph (1). *Public prison*. This includes a military prison (s. 133 (1) ), but not a detention barrack.

Paragraph (2). *Commanding officer*. This means the commanding officer as defined by Rule 129. See K.R., para. 456.

*Prescribed officer*. See Rule 126 (A) for the other officers who have been prescribed as committing authorities for the purpose of this section.

Paragraph (3). *Prescribed officer*. See Rule 126 (D) for the other officers who have been prescribed as discharging authorities for the purposes of this section.

Paragraph (4). *Prescribed officer*. See Rule 126 (B) for the other officers who have been prescribed as removing authorities for the purpose of this section.

Part I. **65.** Where a sentence of imprisonment or detention is passed or being undergone in India or any colony, then, for the purposes of the provisions of this Act relating to imprisonment or detention, as the case may be—

Supple-  
mental pro-  
vision as to  
sentences of  
imprison-  
ment or de-  
tention  
passed or  
being  
undergone  
in India or  
a colony.

(1.) The expression “public prison” means any of the following prisons ; that is to say,

(a.) where the sentence was passed in India, any authorised prison in India ;

(b.) where the sentence was passed in a colony, any authorised prison in that colony ;

(c.) any such authorised prison in any part of His Majesty’s dominions other than that in which the sentence was passed as may be prescribed ; and

(d.) any public prison in the United Kingdom as above defined for the purpose of the provisions of this Act relating to imprisonment in the United Kingdom :

(2.) “Authorised prison” means any prison in India or any colony which the Governor-General of India or the Governor of such colony, with the concurrence of the Secretary of State may have appointed as a prison in which military prisoners may be confined :

(3.) A military prisoner may temporarily be confined in a prison not a public prison, with the assent of the authority having jurisdiction over such prison. And a military prisoner who is to undergo his sentence in the United Kingdom, until he reaches a prison in the United Kingdom in which he is to undergo his sentence, may be kept in military custody or in civil custody, and partly in one description of custody and partly in the other, and may from time to time be transferred from military custody to civil custody, and from civil custody to military custody, as occasion may require.

(4.) Any one or more of the following officers shall be the committing authority ; that is to say,

(a.) In India—

(i.) The Commander-in-Chief of the forces in India ;

\* \* \* \* \*

(iii.) The Adjutant-General in India ; and

\* \* \* \* \*

(b.) In a colony, the officer commanding the forces in that colony ; and

(c.) In any case, whether in India or in a colony—

(i.) The officer who confirmed the sentence ;

(ii.) The commanding officer of the military prisoner or soldier undergoing detention ; and

(iii.) Any other prescribed officer :

- (5.) Any of the following officers shall be the discharging authority : Part I.  
 (a.) The officer commanding the military district or station in which the prisoner or soldier undergoing detention may be ; ss. 65-66.  
 (b.) Any officer in this section named as a committing authority, with this exception, that the commanding officer shall only be a discharging authority where the sentence was passed by a commanding officer ; and  
 (c.) Any other prescribed officer.
- (6.) Any one or more of the following officers shall be the removing authority :  
 (a.) Any officer in this section named as a committing authority ;  
 (b.) The officer commanding the military district or station where the prisoner or soldier undergoing detention may be ; and  
 (c.) Any other prescribed officer.

## NOTE.

Paragraph (1). *Public prison* includes a military prison, s. 133, but not a detention barrack.

For definitions of India and colony, see s. 190 (21) and (23) ; and as to the Isle of Man and Channel Islands, see s. 187 (2).

(c.) These have been prescribed by Rule 130 : see note to that Rule. See also s. 134, and K.R., paras. 610, 611.

Paragraph (2). *Authorised prison* includes a military prison in India, s. 133, but not a detention barrack.

Paragraph (4). *Commanding officer*. This means the commanding officer as defined by Rule 129. See K.R., para. 456.

*Prescribed officer*. See Rule 126 (A).

Paragraph (5.) *Prescribed officer*. See Rule 126 (D).

See generally as to orders and warrants of officers, s. 172 and note.

66. Where a sentence of imprisonment or detention is passed by a court-martial or commanding officer in any foreign country, then if and as soon as the military prisoner or soldier undergoing detention on whom such sentence has been passed is brought into the United Kingdom or India, or any colony, the provisions of this Act shall apply in the same manner in all respects as if the sentence of imprisonment or detention had been passed in the United Kingdom, India, or any colony, as the case may be, with this addition, that the officer commanding the army or force to which the military prisoner or soldier undergoing detention belonged at the time of his being sentenced shall also be deemed to be a committing authority.

Supplemental provision as to sentences of imprisonment and detention passed in a foreign country.

## NOTE.

*Imprisonment* : It must be remembered that a regimental court-martial and a commanding officer can no longer pass a sentence of imprisonment.

*Commanding officer* : see note to s. 59.

*Foreign country ; India ; Colony*. For definitions, see s. 190 (21), (23), and (24) ; and as to Isle of Man and Channel Islands, see s. 187 (2).

Part I.  
ss. 67-68.

Removal of  
prisoner or  
soldier  
undergoing  
detention to  
place where  
corps is  
serving.

67. (1.) The competent military authority (hereafter in this section mentioned) may give directions for the delivery into military custody of any military prisoner or soldier undergoing detention for the time being undergoing his sentence of imprisonment or detention, and the removal of such prisoner or soldier, whether with his corps or separately, to any place beyond the seas where the corps, or any part thereof, to which for the time being he belongs, is serving or under orders to serve.

(2.) The directions of such competent military authority, or an order of the removing authority issued in pursuance of such directions, shall be sufficient authority for the removal of such prisoner or soldier from the prison or detention barrack in which he is confined, and for his conveyance in military custody to any place designated, and for his intermediate custody during such removal and conveyance.

(3.) The competent military authority may further give directions for the discharge of the prisoner or soldier, either conditionally or unconditionally at any time while he is in military custody under this section.

(4.) For the purposes of this section any one or more of the following officers shall be the competent military authority :

(a.) In the United Kingdom—

- (i.) The Commander-in-Chief ;
- (ii.) The Adjutant-General ; and
- (iii.) Any other prescribed officer.

(b.) In India—

- (i.) The Commander-in-Chief of the forces in India ;
- \*            \*            \*            \*            \*
- (iii.) The Adjutant-General in India ; and
- \*            \*            \*            \*            \*

(c.) In a colony, the officer commanding the forces in that colony : and

(d.) In any case, whether in India or in a colony, the prescribed officer.

#### NOTE.

The object of this section is to enable soldiers who are undergoing sentences of imprisonment or detention to be removed in custody for foreign service. Soldiers sentenced for military offences (desertion, for instance), may in many cases be given a fresh opportunity of recovering their characters by being at once removed to a foreign station. The section will also prevent offences committed immediately before embarkation for service from escaping all punishment ; but it gives no authority to commit offenders committing such offences to any public prison on their arrival at the foreign station.

*Prescribed officer.* See Rule 126 (B), for the other officers who have been prescribed as the competent military authority for the purpose of this section.

For definition of India and colony, see s. 190 (21) and (23) ; and as to the Isle of Man and Channel Islands, see s. 187 (?).

Commence-  
ment of  
term of

68. (1.) The term of penal servitude, imprisonment, or detention to which a person is sentenced by a court-martial, whether the

sentence has been revised or not, and whether the person is already undergoing sentence or not, shall be reckoned to commence on the day on which the original sentence and proceedings were signed by the president of the court-martial.

Part I.  
ss. 68-69.  
penal servitude,  
imprisonment,  
or detention.

(2.) An offender under this Act shall not be subject to imprisonment or detention for more than two consecutive years, whether under one or more sentences.

#### NOTE.

Under this section a term of penal servitude, imprisonment, or detention, under sentence by court-martial cannot be made to commence at the expiration of a previous term of penal servitude, imprisonment, or detention, but must commence on the day on which the sentence is signed by the president of the court. If, therefore, the court desire to award imprisonment (say three months) on a prisoner already in prison for six months' imprisonment, of which three months are unexpired, the court must award six months, and similarly with respect to sentences of penal servitude and detention.

The period of imprisonment or detention which a soldier is to suffer, whether under one sentence or several sentences, must never exceed two years. This restriction applies where a soldier is tried at the expiration of a sentence of imprisonment or detention for an offence committed during that sentence. K.R., para. 584. Two years is the maximum period which a prisoner can usually endure according to the system of imprisonment with hard labour in civil prisons in the United Kingdom, and is, in many cases, a more severe punishment than five years' penal servitude. Any period passed in military custody or in imprisonment by the civil power between two periods of imprisonment, or of detention, or between a period of imprisonment and a period of detention, or *vice versa*, is to be reckoned as part of the term. But where there is even a single day's actual freedom, whether by release or escape, the continuity is broken.

No restriction is imposed on the duration of a sentence of penal servitude, as penal servitude for life is authorised for every offence for which penal servitude can be imposed under this Act.

Where a soldier sentenced to be reduced to the ranks was found not to have legally the grade of non-commissioned officer, and the court on revision passed a sentence of imprisonment, the imprisonment was held to commence on the date of the original sentence of reduction.

As to commencement on commutation, see note to s. 57.

#### MISCELLANEOUS.

##### *Articles of War and Rules of Procedure.*

69. It shall be lawful for His Majesty to make Articles of War for the better government of officers and soldiers, and such Articles shall be judicially taken notice of by all judges and in all courts whatsoever: Provided that no person shall, by such Articles of War, be subject to suffer any punishment extending to life or limb, or to be kept in penal servitude, except for crimes which are by this Act expressly made liable to such punishment as aforesaid, or be subject, with reference to any crimes made punishable by this Act, to be punished in any manner which does not accord with the provisions of this Act.

Power of  
His Majesty  
to make  
Articles of  
War.

#### NOTE.

Formerly, as is well known, military law was contained in the annual Mutiny Act and in Articles of War framed under its authority; see Ch. II.



## Part I.

ss. 70-71.

Power of His Majesty to make rules of procedure.

70. (1.) Subject to the provisions of this Act His Majesty may, by rules to be signified under the hand of a Secretary of State, from time to time make, and when made repeal, alter, or add to, provisions in respect of the following matters or any of them ; that is to say,

- (a.) The assembly and procedure of courts of inquiry ;
  - (b.) The convening and constituting of courts-martial ;
  - (c.) The adjournment, dissolution, and sittings of courts-martial ;
  - (d.) The procedure to be observed in trials by court-martial ;
  - (e.) The confirmation and revision of the findings and sentences of courts-martial ; and enabling the authority having power under section fifty-seven of this Act to commute sentences to substitute a valid sentence for an invalid sentence of a court-martial ;
  - (f.) The carrying into effect sentences of courts-martial ;
  - (g.) The forms of orders to be made under the provisions of this Act relating to courts-martial, penal servitude, imprisonment, or detention ;
  - (h.) Any matter in this Act directed to be prescribed ;
  - (i.) Any other matter or thing expedient or necessary for the purpose of carrying this Act into execution so far as relates to the investigation, trial, and punishment of offences triable or punishable by military law :
- (2.) Provided always, that no such rules shall contain anything contrary to or inconsistent with the provisions of this Act.
- (3.) All rules made in pursuance of this section shall be judicially noticed.
- (4.) All rules made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament.

(5.) The rules as to the procedure of courts of inquiry may provide for evidence being taken on oath, and may empower courts of inquiry to administer oaths for that purpose.

## NOTE.

The original Rules of Procedure made under this section, and dated the 29th August, 1881, are now replaced by the Rules of Procedure, 1907, printed below, p. 448 : see page p. 453, note (a).

Sub-section (5) was added by the Army (Annual) Act, 1901 ; the power given by the sub-section has been exercised by Rule 124 (H).

*Command.*

Removal of doubts as to military command.

71. (1.) For the purpose of removing doubts as to the powers of command vested or to be vested in officers and others belonging to His Majesty's forces, it is hereby declared that His Majesty may, in such manner as to His Majesty may from time to time seem meet, make regulations as to the persons to be invested as officers, or otherwise, with command over His Majesty's forces, or any part



thereof, or any person belonging thereto, and as to the mode in which such command is to be exercised ; provided that command shall not be given to any person over a person superior in rank to himself. Part 1.  
ss. 71-73.

(2.) Nothing in this section shall be deemed to be in derogation of any power otherwise vested in His Majesty.

NOTE.

This section removes all doubts as to the power of His Majesty to regulate the command by officers of the regular forces over those forces, or over any portion of the auxiliary forces, and the command by officers of any portion of the auxiliary forces over any other portion of those forces, or over any portion of the regular forces. The provisions of the Militia Acts relating to command, and those of the Volunteer Act which limited the command of officers of the regular forces over volunteers, and of volunteer officers over any portion of the regular forces, have been repealed.

The proviso applies only to rank in relation to military command, and does not prevent an officer from having military command over an officer with higher relative rank, but no military command.

*Inquiry as to and Confession of Desertion.*

72. (1.) When any soldier has been absent without leave from his duty for a period of twenty-one days, a court of inquiry may as soon as practicable be assembled, and inquire in the prescribed manner on oath or solemn declaration (which such court is hereby authorised to administer) respecting the fact of such absence, and the deficiency (if any) in the arms, ammunition, equipments, instruments, regimental necessaries, or clothing of the soldier ; and if satisfied of the fact of such soldier having absented himself without leave or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency (if any), and the commanding officer of the absent soldier shall enter in the regimental books a record of the declaration of such court. Inquiry by court on absence of soldier.

(2.) If the absent soldier does not afterwards surrender or is not apprehended, such record shall have the legal effect of a conviction by court-martial for desertion.

NOTE.

In the event of a soldier being absent without leave for a period of 21 days, a court of inquiry must be assembled at once, unless he has been taken into custody, K.R., para. 673 ; but that paragraph does not apply in the case of absconded recruits. The soldier must have been absent for a full period of 21 days before the court can be legally assembled, and the court therefore must not be assembled until the 22nd day.

The declaration of the court should contain—

- (1.) The place from which the man absented himself ; and
- (2.) The fact, if such fact exists, that the man illegally absent had been warned for embarkation ;
- (3.) The date of the deficiency, if any, and the place where it occurred.

The procedure of such a court is detailed in Rule 125 : under that Rule and this section the witnesses will be sworn, but not the members of the court.

73. (1.) Where a soldier signs a confession that he has been guilty of desertion or of fraudulent enlistment, a competent military authority may, by the order dispensing with his trial by a court-martial, or by any subsequent order, award the same forfeitures and the same deductions from pay (if any) as a court-martial could Confession by soldier of desertion or fraudulent enlistment.

Part I. award for the said offence, or as are consequential upon conviction  
 ss. 73-74. by a court-martial for the said offence, except such of them as may  
 be mentioned in the order.

(2.) If upon any such confession, evidence of the truth or falsehood of such confession cannot then be conveniently obtained, the record of such confession, countersigned by the commanding officer of the soldier, shall be entered in the regimental books, and such soldier shall continue to do duty in the corps in which he may then be serving, or in any other corps to which he may be transferred, until he is discharged or transferred to the reserve, or until legal proof can be obtained of the truth or falsehood of such confession.

(3.) The competent military authority for the purposes of this section means the Commander-in-Chief or Adjutant-General, or any prescribed general officer; or, in the case of India, the Commander-in-Chief of the forces in India, or such officer as the Commander-in-Chief of the forces in India, with the approval of the Governor-General of India in Council, may appoint, and in the case of a colony and elsewhere the general or other officer commanding the forces, subject in the case of India, or a colony, or elsewhere, to any directions given by the Commander-in-Chief.

NOTE.

Before accepting a confession of desertion or fraudulent enlistment signed by a soldier, care should be taken to ascertain that he fully understands the nature and consequences of his act.

He will forfeit the whole of his prior service, and be liable to serve for the original term of his enlistment reckoned from the date of his trial being dispensed with; and the forfeited service can only be restored by the Secretary of State, s. 79 (proviso): see K.R., para. 273.

The deductions from pay are regulated by s. 138 and the Pay Warrant.

For definition of India and colony, see s. 190 (21) and (23); and as to the Isle of Man and Channel Islands, see s. 187 (2).

Sub-section (3). As to India, see note to s. 57 (2) (b).

*Prescribed general officer*: See Rule 126 (F).

See also K.R., paras. 479, 541-546.

*Provost Marshal.*

Provost-  
marshal.

74. (1.) For the prompt repression of all offences which may be committed abroad, provost-marshals with assistants may from time to time be appointed by the general order of the general officer commanding a body of forces.

(2.) A provost-marshal or his assistants may at any time arrest and detain for trial persons subject to military law committing offences, and may also carry into execution any punishments to be inflicted in pursuance of a court-martial, but shall not inflict any punishment of his or their own authority.

Provided that a provost-martial and his assistants shall, as respects any soldier in his or their custody and undergoing field punishment, have the same powers as the governor of a military prison.

NOTE.

The provost-marshal can only be appointed abroad, and will always be a commissioned officer; his assistants may be either officers or non-commissioned

officers. K.R., para. 599. He is under this Act merely an executive officer. without any authority to award punishment himself. He can, however, arrest and detain persons committing offences who are subject to military law including therefore followers when on active service (see ss. 175, 176, 180), and can apply on active service for their trial by court-martial. If the conveying officer thinks it impracticable to try the case by an ordinary court-martial, he can convene a field general court-martial which can try the accused summarily, and inflict any punishment a general court-martial can inflict, whether on officers, soldiers, or followers. See s. 49. The provost-marshal and his assistants may carry into execution the sentence, when confirmed, of such court as well as of other courts-martial, and by virtue of the proviso (introduced into the Act by the Army (Annual) Act, 1907) have the powers of the governor of a military prison as respects soldiers undergoing field punishment; the powers of such a governor are prescribed by the rules made under subs. (2) of s. 133, and, under subs. (7) of that section, in a country where active operations are being conducted, the officer commanding-in-chief has the power of the Secretary of State as to military prisons, and can thus make prison rules.

### *Restitution of Stolen Property.*

75. (1.) Where a person has been convicted by court-martial of having stolen, embezzled, received, knowing it to be stolen, or otherwise unlawfully obtained, any property, and the property or any part thereof is found in the possession of the offender, the authority confirming the finding and sentence of such court-martial, or the Commander-in-Chief, may order the property so found to be restored to the person appearing to be the lawful owner thereof.

Power as to  
restitution  
of stolen  
property.

(2.) A like order may be made with respect to any property found in the possession of such offender, which appears to the confirming authority or Commander-in-Chief to have been obtained by the conversion or exchange of any of the property stolen, embezzled, received, or unlawfully obtained.

(3.) Moreover, where it appears to the confirming authority or Commander-in-Chief from the evidence given before the court-martial, that any part of the property stolen, embezzled, received, or unlawfully obtained was sold to or pawned with any person without any guilty knowledge on the part of the person purchasing or taking in pawn the property, the authority or Commander-in-Chief may, on the application of that person, and on the restitution of the said property to the owner thereof, order that out of the money (if any) found in the possession of the offender, a sum not exceeding the amount of the proceeds of the said sale or pawning shall be paid to the said person purchasing or taking in pawn.

(4.) An order under this section shall not bar the right of any person, other than the offender, or any one claiming through him, to recover any property or money delivered or paid in pursuance of an order under this section from the person to whom the same is so delivered or paid.

### NOTE

The restoration under this section can only be made by order of the confirming authority, or if there is a Commander-in-Chief, by him: and an order can only deal with property or money found in the possession of the offender himself; but where the offender occupies a house, property found in that house is *prima facie* in his possession.

**Part II.** The stealing or embezzlement of property does not alter the ownership, and therefore *prima facie* the person from whom property has been stolen or embezzled is the lawful owner of it.

ss. 75-78.

Care must be taken to report to the proper authority any circumstances which would justify him in making an order under this section.

As to stoppages in respect of property stolen or unlawfully obtained, &c., see K.R., para. 586.

## PART II.

### ENLISTMENT.

For history of service in the army, see Ch. IX, and for general explanation of this Part see Ch. X.

For regulations as to recruiting, transfers, discharge and service, see K.R., paras. 262 *et seq.*, and the Regulations for Recruiting.

#### *Period of Service.*

Limit of original enlistment.

**76.** A person may be enlisted to serve His Majesty as a soldier of the regular forces for a period of twelve years, or for such less period as may be from time to time fixed by His Majesty, but not for any longer period, and the period for which a person enlists is in this Act referred to as the term of his original enlistment.

#### NOTE.

Terms of original enlistment.

The terms of enlistment for the various arms of the service, and conditions of transfer, are prescribed by the Regulations above mentioned.

**77.** The original enlistment of a person under this Act shall be as follows, either—

- (1.) For the whole of the term of his original enlistment in army service ; or
- (2.) For such portion of the term of his original enlistment as may be from time to time fixed by a Secretary of State, and specified in the attestation paper, in army service, and for the residue of the said term in the reserve.

#### NOTE.

Paragraph (2). *The reserve.* This means the Army Reserve under the Reserve Forces Act, 1882. See 45 & 46 Vict. c. 48. s. 28.

Change of conditions of service.

**78.** (1.) A Secretary of State may from time to time, by general or special regulations, vary the conditions of service, so as to permit a soldier of the regular forces in army service, with his assent, either—

- (a.) To enter the reserve at once for the residue unexpired of the term of his original enlistment ; or
- (b.) To extend his army service for all or any part of the residue unexpired of such term ; or
- (c.) To extend the term of his original enlistment up to the period of twelve years or any shorter period.

(2.) A Secretary of State may from time to time by general or special regulations vary the conditions of service so as to permit a man in the reserve, with his assent, to re-enter upon army service for all or any part of the residue unexpired of the term of his original enlistment, or for any period of time not exceeding twelve years in the whole from the date of his original enlistment.

## NOTE.

*The reserve.* See note to last section.

As to a man entering the reserve before the time of his army service has expired, see s. 89.

The words "or any shorter period" were added by the Army (Annual) Act, 1901. The Regulations now allow extension to 7 years in the case of all branches of the service, except the artillery, in the case of which the period is 8 or 6 years: K.R., para. 262.

79. In reckoning the service of a soldier of the regular forces for the purpose of discharge or of transfer to the reserve—

Reckoning  
and for-  
feiture of  
service.

(1.) The service shall begin to reckon from the date of his attestation; but

(2.) Where a soldier of the regular forces has been guilty of any of the following offences:

(a.) Desertion from His Majesty's service; or

(b.) Fraudulent enlistment;

then either upon his conviction by court-martial of the offence, or (if having confessed the offence he is liable to be tried) upon his trial being dispensed with by order of the competent military authority, the whole of his prior service shall be forfeited, and he shall be liable to serve as a soldier of the regular forces for the term of his original enlistment, reckoned from the date of such conviction or such order dispensing with trial, in like manner as if he had been originally attested at that date:

Provided that a Secretary of State may restore all or any part of the service forfeited under this section to any soldier who may perform good and faithful service, or may otherwise be deemed by such Secretary of State to merit such restoration of service, or may be recommended for such restoration of service by a court-martial.

## NOTE.

Paragraph (2). A soldier will not forfeit service towards discharge for any absence or for any period of imprisonment or detention, but if he is convicted of desertion or fraudulent enlistment he will forfeit all his prior service, and begin again as if he had enlisted at the date of his conviction. The Secretary of State, however, may restore all or part of the forfeited service to a soldier where either the soldier performs good and faithful service, or a court-martial recommends it. See K.R., para. 273.

The paragraph provides not only for forfeiture of service on conviction, but also in cases in which on the confession of the offender trial is dispensed with (see s. 73) by order of the competent military authority. The paragraph applies to the reckoning of service for purposes of discharge or transfer to the reserve only. Forfeiture of ordinary pay is dealt with in s. 138, while forfeiture of service towards good conduct pay or pension is regulated by the Pay Warrant.



## Part II.

ss. 79-80.

If an army reserve man enlists and is sent back to the reserve, he does not forfeit any part of his service, but if retained with the colours, his service will be reckoned from the date of his improper attestation. See K.R., para. 274.

*If he is liable to be tried.* These words exclude the application of the paragraph in the case of a soldier who after three years of exemplary service has made a confession of desertion when not on active service, or of fraudulent enlistment. Under s. 161 a soldier making such a confession cannot be tried or punished, and it is not intended that he should forfeit his service under this section; but if the offence to which he confesses was that of fraudulent enlistment, he will under s. 161 forfeit all service prior to the date of his fraudulent enlistment, inasmuch as by such enlistment he has contracted to ignore that service and to serve for the term in his new attestation: and he will be held to his new contract so to serve. But under the proviso to s. 161 (added by the Army (Annual) Act, 1900) the Secretary of State has the same power of restoring service so forfeited as he has under this section: K.R., para. 273.

*Proceedings for Enlistment.*

Mode of  
enlistment  
and attesta-  
tion.

80. (1.) Every person authorised to enlist recruits in the regular forces (in this Act referred to as the "recruiter") shall give to every person offering to enlist a notice in the form for the time being authorised by a Secretary of State, stating the general requirements of attestation and the general conditions of the contract to be entered into by the recruit, and directing such person to appear before a justice of the peace either forthwith or at the time and place therein mentioned.

(2.) Upon the appearance before a justice of the peace of a person offering to enlist, the justice shall ask him whether he has been served with and understands the notice and whether he assents to be enlisted, and shall not proceed with the enlistment if he considers the recruit under the influence of liquor.

(3.) If he does not appear before a justice, or on appearing does not assent to be enlisted, no further proceedings shall be taken.

(4.) If he assents to be enlisted—

(a.) The justice, after cautioning such person that if he makes any false answer to the questions read to him he will be liable to be punished as provided by this Act, shall read or cause to be read to him the questions set forth in the attestation paper for the time being authorised by a Secretary of State, and shall take care that such person understands each question so read, and after ascertaining that the answer of such person to each question has been duly recorded opposite the same in the attestation paper, shall require him to make and sign the declaration as to the truth of those answers set forth in the said paper, and shall then administer to him the oath of allegiance contained in the said paper:

(b.) Upon signing the declaration and taking the oath, such



person shall be deemed to be enlisted as a soldier of His Majesty's regular forces :

- (c.) The justice shall attest by his signature, in manner required by the said paper, the fulfilment of the requirements as to attesting a recruit, and shall deliver the attestation paper, duly dated, to the recruiter :
- (d.) The fee for the attestation of a recruit, and for all acts and things incidental thereto, shall be one shilling and no more, and shall be paid to the clerk of the justice :
- (e.) The officer who finally approves of a recruit for service shall, at his request, furnish him with a certified copy of his attestation paper.
- (5.) The date at which the recruit signs the declaration and takes the oath in this section in that behalf mentioned shall be deemed to be the date of the attestation of such recruit.

(6.) The competent military authority, if satisfied that there is any error in the attestation paper of a recruit, may cause the recruit to attend before some justice of the peace, and that justice, if satisfied that such error exists, and is not so material as to render it just that the recruit should be discharged, may amend the error in the attestation paper, and the paper as amended shall thereupon be deemed as valid as if the matter of the amendment had formed part of the original matter of such paper.

(7.) Where the regulations of a Secretary of State under this part of this Act require duplicate attestation papers to be signed and attested, this section shall apply to both such duplicates, and in the event of any amendment of an attestation paper the amendment shall be made in both of the duplicate attestation papers.

#### NOTE.

A man is under this Act enlisted by the act of attestation ; and the recruiter's gift of the shilling is no longer necessary. He will give the form, authorised by the Secretary of State, directing the recruit to appear before a justice. The man, if he fails to appear, cannot, as heretofore, be arrested as a deserter ; and if he appears and dissents from his enlistment, he will not be liable to pay any smart money. No account will, therefore, be taken of any man before he is actually attested before a justice. As to the meaning of justice, see s. 94.

After such attestation a man can only get off his contract of enlistment by purchasing his discharge under s. 81 within three months afterwards on payment of a sum which at present is fixed at ten pounds. But discharge on this payment is a matter of right not of favour, unless it is claimed during a period when men who would otherwise be transferred to the reserve are under s. 88 continued in army service. See s. 81.

The attestation is required to be in duplicate, K.R., paras. 1900-1908.

*Competent military authority.* See definition in s. 101. Rule 128 (iii) for the purposes of this section adds to the officers who are included under the term "competent military authority" for the purposes generally of Part II the commanding officer of the soldier, and every officer superior in command to that commanding officer.

Part II. **81.** If a recruit within three months after the date of his attestation pays for the use of His Majesty a sum not exceeding ten pounds, he shall be discharged with all convenient speed, unless he claims such discharge during a period when soldiers in army service who otherwise would be transferred to the reserve are required by a proclamation of His Majesty in pursuance of this Act to continue in army service, in which case he may be retained in His Majesty's service during that period, and at the termination thereof shall, if he so require it, on the payment then of the said sum, be discharged.

ss. 81-82.  
Power of  
recruit to  
purchase  
discharge;

*Appointment to Corps and Transfers.*

Enlistment  
for general  
service and  
appoint-  
ment to  
corps.

**82.** (1.) Recruits may, in pursuance of any general or special regulations from time to time made by a Secretary of State, be enlisted for service in particular corps of the regular forces, but save as is provided by such regulations, if any, recruits shall be enlisted for general service.

(2.) The competent military authority shall as soon as practicable appoint a recruit, if enlisted for service in a particular corps, to that corps, and if enlisted for general service, to some corps of the regular forces.

NOTE.

Sub-section (2). *Appoint.* The words "appoint" and "transfer" are used in this Act in the following senses. A soldier on attestation is appointed to the corps out of which he cannot be moved without his consent, except as mentioned in the Act. This appointment differs from the appointment of a soldier to a particular office, inasmuch as it does not, like the latter appointment, require the consent of the soldier.

Any disposition of a soldier within his corps which can be legally effected independently of his consent is termed posting.

- (a.) In the case of infantry, a soldier may be posted to a battalion of his territorial or other regiment, or to the permanent staff of any volunteers belonging to that regiment.
- (b.) In the case of artillery, the soldier may be posted to any battery or company.
- (c.) In the case of engineers, he may be posted to any troop or company.
- (d.) In the case of other corps to any company or station according to their respective sub-divisions.

"Transfer" is a disposition of the soldier which moves him out of the corps to which he was originally appointed, or to which, for the time being he belongs, either with his consent or under special conditions provided by the Act.

Thus if a soldier is moved—

- (a.) In the case of infantry, out of his territorial regiment to any other regiment or to any other corps; or
- (b.) In the case of artillery or engineers, out of the artillery or engineers to another corps; or
- (c.) In the case of any other corps, out of his corps into any body outside his corps,  
he will be transferred.

“Attach” means removing temporarily a soldier either with or without his consent from a corps and placing him with another corps, without affecting in any way his status in the first-mentioned corps. Part II.  
ss. 82-83.

*Competent military authority.* See note on s. 80. The “competent military authority” has the same meaning in this section.

83. A soldier of the regular forces, whether enlisted for general service or not, when once appointed to a corps, shall serve in that corps for the period of his army service, whether during the term of his original enlistment or during the period of such re-engagement as is in this Act mentioned, unless transferred under the following provisions : Effect of  
appointment to a  
corps and  
provision  
for  
transfers.

(1.) A soldier of the regular forces enlisted for general service may, within three months after the date of his attestation, be transferred to any corps of the regular forces of the same arm or branch of the service by order of the competent military authority.

(2.) A soldier of the regular forces may at any time with his own consent be transferred by order of the competent military authority to any corps of the regular forces.

(3.) Where a soldier of the regular forces is in pursuance of any of the foregoing provisions transferred to a corps in an arm or branch different from that in which he was previously serving, the competent military authority may by order vary the conditions of his service so as to correspond with the general conditions of service in the arm or branch to which he is transferred.

(4.) A soldier of the regular forces in any branch of the service may be transferred by order of the competent military authority to any corps of the same branch which is serving in the United Kingdom in either of the following cases—

- (a.) when he has been invalided from service beyond the seas ; or
- (b.) when, in the case of his corps or the part thereof in which he is serving being ordered on service beyond the seas, he is either unfit for such service by reason of his health, or is within two years from the end either of the period of his army service in the term of his original enlistment, or of such re-engagement as is in this Act mentioned.

(5.) Where a soldier of the regular forces in any branch of the service, who was enlisted to serve part of the term of his original enlistment in the reserve, and has not extended his army service for the whole of that time, is on service beyond the seas, and at the time of his corps or the part thereof in which he is serving being ordered to another station or to return home, has more than two years of his army service in the term of his original enlistment unexpired, he may be transferred by order of the competent military authority to any corps of the same branch which or a part of which is on service beyond the seas.

## Part II.

s. 83.

(6.) Where a soldier of the regular forces has been transferred to serve, either as a warrant officer not holding an honorary commission, or on the staff, or in any corps not being a corps of infantry, cavalry, artillery, or engineers, he may by order of the competent military authority, either during the term of his original enlistment or during the period of his re-engagement, be removed from such service and transferred to any corps of the regular forces serving in the United Kingdom, or to any corps of the regular forces serving on the station beyond the seas on which he is serving at the time of his removal, or to the corps of the regular forces in which he was serving prior to such first-mentioned transfer, either in the rank he holds at the time of his removal or any lower rank.

(7.) Where a soldier of the regular forces—

(a.) Has been guilty of the offence of desertion from His Majesty's service or of fraudulent enlistment, and has either been convicted of the same by a court-martial, or, having confessed the offence, is liable to be tried, but his trial has been dispensed with by order of the competent military authority ; or

(b.) Has been sentenced by a court-martial for any offence to a punishment not less than detention for a term of three months ;

such soldier shall be liable, in commutation wholly or partly of other punishment, to general service, and may from time to time be transferred to such corps of the regular forces as the competent military authority may from time to time order.

(8.) A soldier of the regular forces delivered into military custody or committed by a court of summary jurisdiction in any part of His Majesty's dominions as a deserter shall be liable to be transferred by order of the competent military authority to any corps of the regular forces near to the place where he is delivered or committed, or to any other corps to which the competent military authority think it desirable to transfer him, and to serve in the corps to which he is transferred without prejudice to his subsequent trial and punishment.

## NOTE.

*Appointed—transferred*, see note on s. 82.

Paragraph (1). The transfer during these three months does not require the consent of the soldier. During those three months he is entitled to his discharge under s. 81 on proper demand and payment.

Paragraph (3). *Vary the conditions of his service*. This is to provide for such a case as the transfer of a man from the infantry to the cavalry. The time of service with the colours in some branches of the cavalry is usually longer than in the infantry, and it may consequently be necessary to lengthen the army service of the man transferred.

Paragraphs (4) and (5). *Or the part thereof in which he is serving*. These words are inserted in consequence of "corps" including an infantry terri-

torial regiment, part of which may be serving in and the other part out of the United Kingdom. It will therefore apply to the case where the battalion in which the man is serving is ordered abroad. Part II.  
ss. 83-84.

Paragraph (6). The references to particular corps, such as the Armourer Serjeants, the Medical Staff Corps, &c., have been repealed. All such corps are included in the general words "or in any corps not being a corps of infantry, cavalry, artillery, or engineers." And see s. 190 (15) (A) (iii).

*Transferred to serve.* This is held to apply to a warrant officer who has been promoted to that rank in the usual course in his own corps.

Paragraph (7). *Is liable to be tried.* These words will relieve from the operation of this paragraph a soldier who, though having confessed an offence, is exempted by s. 161 from trial and punishment. The liability to general service is a commutation of punishment which may be allowed by the competent military authority, and is not a punishment which a court-martial can award. Consequently it is not within the powers of mitigation and commutation given to confirming and other officers by s. 57. But in the case of an offence other than desertion or fraudulent enlistment, the liability arises only when the sentence awarded by the court-martial is not less than three months' detention; formerly the sentence was required to be not less than six months' imprisonment, but a term of three months was substituted for six months by the Army (Annual) Act, 1904, and detention was substituted for imprisonment by the Army (Annual) Act 1907. An order passed under this paragraph will be entered in the soldier's record of service, K.R., para. 597.

*Competent military authority* is defined in s. 101. Rule 128 (iv) adds to the definition, for the purpose of a transfer by consent under paragraph (2) of this section, any authority superior in command to the commanding officer of the soldier; and see Rule 128 (vi) and K.R. para. 597 as to the competent military authority for the purpose of paragraph (7).

See generally as to transfers, K.R., paras. 323-369.

### *Re-engagement and Prolongation of Service.*

84. (1.) Subject to any general or special regulations from time to time made by a Secretary of State, a soldier of the regular forces, if in army service, and after the expiration of nine years from the date of his original term of enlistment may, on the recommendation of his commanding officer, and with the approval of the competent military authority, be re-engaged for such further period of army service as will make up a total continuous period of twenty-one years of army service, reckoned from the date of his attestation, and inclusive of any period previously served in the reserve. Re-engagement of soldiers.

(2.) A soldier of the regular forces during his period of re-engagement shall be liable to forfeit his previous service during such period of re-engagement in like manner as he is liable under this Part of this Act during the term of his original enlistment.

(3.) A soldier of the regular forces who so re-engages shall make before his commanding officer a declaration in accordance with the said regulations.

#### NOTE.

Sub-section (1). *Competent military authority.* See note on s. 80. The "competent military authority" has the same meaning in this section.



Part II. **85.** A soldier of the regular forces who has completed, or will  
**ss. 85-87.** within one year complete, a total period of twenty one years' service,  
 Con- inclusive of any period served in the reserve, may give notice to his  
 tinuance in commanding officer of his desire to continue in His Majesty's  
 service after service in the regular forces; and if the competent military  
 twenty-one years' authority approve, he may be continued as a soldier of the regular  
 service. forces in the same manner in all respects as if his term of service  
 were still unexpired, except that he may claim his discharge at the  
 expiration of any period of three months after he has given notice  
 to his commanding officer of his wish to be discharged.

NOTE.

*Inclusive of any period served in the reserve.* This meets the case where a man has been transferred to the reserve, and after staying a time in the reserve has either been called out and re-engaged, or has volunteered to serve again with the colours and has re-engaged.

*Competent military authority.* See note on s. 80. The "competent military authority" has the same meaning in this section.

See K.R., paras. 270-272, as to conditions, &c., of continuance in the service under this section.

Soldiers who gave notice to continue their service were formerly assumed to remain under the Act to which they were subject at the time they gave the notice, but every soldier who gives such notice after the commencement of this Act will be considered to have consented to the application to him of the whole of the provisions of Part II of this Act.

Re-engagement and continuance of service of non-commissioned officers.

**86.** The regulations from time to time made in pursuance of this Part of this Act may, if it seems expedient, provide that a non-commissioned officer of the regular forces who extends his army service for the residue unexpired of his original term of enlistment shall have the right at his option to re-engage under section eighty-four, and to continue his service under section eighty-five of this Act, or to do either of such things, subject nevertheless to the veto of the Secretary of State or other authority mentioned in the regulations, and to such other conditions as are specified in the regulations.

NOTE.

The object of this section is to enable regulations to be made by which a non-commissioned officer, who agrees to extend his army service for the whole of his twelve years may have the right to treat the army as his profession for life, and if he makes himself efficient and conducts himself properly, to continue in the army until he has earned a pension. For the regulations under this section, see K.R., paras. 264-272.

Prolongation of service in certain cases,

**87. (1.)** Where the time at which a soldier of the regular forces would otherwise be entitled to be discharged occurs while a state of war exists between His Majesty and any foreign Power, or while such soldier is on service beyond the seas, or while soldiers in the reserve are required by a proclamation in pursuance of the enactments relating to the calling out of the reserve on permanent service to continue in or re-enter upon army service, the soldier may be detained, and his service may be prolonged for such further



period, not exceeding twelve months, as the competent military authority may order; but at the expiration of that period, or any earlier period at which the competent military authority considers his services can be dispensed with, the soldier shall, as provided by this Act, be discharged with all convenient speed.

Part II.  
ss. 87-88.

(2.) Where the time at which a soldier of the regular forces would otherwise be entitled to be transferred to the reserve occurs while a state of war exists between His Majesty and any foreign Power, the soldier may be detained in army service for such further period, not exceeding twelve months, as the competent military authority may order, but at the expiration of that period, or any earlier period at which the competent military authority consider his services can be dispensed with, the soldier shall, with all convenient speed, be sent to the United Kingdom for the purpose of being transferred to the reserve.

(3.) If a soldier required under this section to be discharged or sent to the United Kingdom desires, while a state of war exists between His Majesty and any foreign Power, to continue in His Majesty's service, and the competent military authority approve, he may agree to continue as a soldier of the regular forces in the same manner in all respects as if his term of service were still unexpired, except that he may claim his discharge at the end of such state of war, or, if it is so provided by such agreement, at the expiration of any period of three months after he has given notice to his commanding officer of his wish to be discharged.

(4.) A soldier who so agrees to continue shall make before his commanding officer a declaration in accordance with and general or special regulations from time to time made by a Secretary of State.

#### NOTE.

*Competent military authority:* see s. 101, and Rule 128.

*The reserve:* see definition in s. 101 (2).

Sub-section (1). *Required by proclamation, &c.* The occasion must be one of imminent national danger or great emergency. (See s. 88, and Reserve Forces Act, 1882, s. 12 (4).)

Sub-section (3). This enables a man who is entitled to be discharged or transferred to the reserve to volunteer for service during the war without re-engaging, or extending his service.

**88. (1.)** It shall be lawful for His Majesty in Council in case of imminent national danger or of great emergency, by proclamation, the occasion being first communicated to Parliament if Parliament be then sitting, or if Parliament be not then sitting, declared by the proclamation, to order that the soldiers who would otherwise be entitled in pursuance of the terms of their enlistment to be transferred to the reserve shall continue in army service.

In imminent national danger His Majesty may continue soldiers in army service or call out for permanent service.

(2.) It shall be lawful for His Majesty by any such proclamation to order a Secretary of State from time to time to give, and when given to revoke or vary, such directions as may seem necessary or

Part II. proper for causing all or any of the soldiers mentioned in the ss. 88-90. proclamation to continue in army service.

(3.) Every soldier for the time being required by, or in pursuance of, such directions to continue in army service shall continue to serve in army service for the same period for which he might be required to serve, if he had been transferred to the reserve, and called out for permanent service by a proclamation of His Majesty under the enactments relating to the reserve.

(4.) Any man who has entered the reserve in pursuance of the terms of his enlistment may be called out for permanent service by a proclamation of His Majesty under the enactments relating to the calling out of the reserve on permanent service.

NOTE.

This section applies to all soldiers who have at any time been enlisted to serve part of their time in the reserve. The effect of the Reserve Forces Act, 1882, s. 14, appears to be that all men in the reserve may be required to serve for a further period of twelve months under the circumstances under which a soldier may be detained in service under s. 87.

The proclamation calling out the reserve may be made under the Reserve Forces Act, 1882, in case of imminent national danger or of great emergency. A man in Section A of the army reserve may be called out for permanent service under the Reserve Forces and Militia Act, 1898, without any proclamation or previous communication to Parliament. See Ch. XI, para. 24.

*Discharge and Transfer to Reserve Force.*

Transfer of  
soldier to  
reserve  
when corps  
ordered  
abroad.

89. In the following cases ; that is to say,

(1.) Where a soldier of the regular forces has been invalided from service beyond the seas ; or

(2.) Where a corps to which a soldier of the regular forces belongs, or the part thereof in which he is serving, is ordered on service beyond the seas and the soldier is either unfit for such service by reason of his health, or is within two years of the end of the period of his army service in the term of his original enlistment,

the competent military authority may by order transfer him to the reserve in like manner as if the period of his actual service were specified in his attestation paper as the portion of the term of his original enlistment which was to be spent in army service.

NOTE.

*Competent military authority*, see definition, s. 101 and Rule 128.

Discharge  
or transfer  
to reserve.

90. (1.) Save as otherwise provided by this Act or the Acts relating to the reserve forces, every soldier of the regular forces upon the completion of the term of his original enlistment, or of the period of his re-engagement, shall be discharged with all convenient speed, but until so discharged shall be subject to this Act as a soldier of the regular forces.

(2.) Where a soldier of the regular forces enlisted in the United Kingdom is, when entitled to be discharged, serving beyond the

seas, he shall, if he so requires, be sent to the United Kingdom, and in such case shall, with all convenient speed, be sent there free of expense, and on his arrival be discharged. If such soldier is permitted, at his request, to stay at the place where he is serving, he shall not afterwards have any claim to be sent at the public expense to the United Kingdom or elsewhere. Part II.  
ss. 90-91.

(3.) Every soldier of the regular forces upon the completion of the period of his army service, if shorter than the term of his original enlistment, shall be transferred to the reserve, but until so transferred shall be subject to this Act as a soldier of the regular forces.

(4.) Where a soldier of the regular forces, when entitled to be transferred to the reserve, is serving beyond the seas, he shall be sent to the United Kingdom free of expense with all convenient speed, and on his arrival shall be transferred to the reserve.

(5.) A soldier of the regular forces who is discharged on the completion of the term of his original enlistment or his re-engagement, as mentioned in the second sub-section of this section, or is transferred to the reserve, shall be entitled to be conveyed free of cost from the place in the United Kingdom where he is discharged or transferred to the place in which he appears from his attestation paper to have been attested, or to any place at which he may at the time of his discharge or transfer decide to take up his residence, and to which he can be conveyed without greater cost: Provided that in the case of transfer to the reserve he shall not be entitled to be so conveyed to any place out of the United Kingdom.

#### NOTE.

Sub-section (1). *Save as otherwise provided.* Section 87 provides for the temporary detention of a man entitled to discharge. Section 158 gives power to detain for trial a man charged with an offence under this Act, though entitled to his discharge or transfer to the reserve.

As to time of discharge, see s. 92, and as to postponement of transfer to the reserve, see s. 87.

Sub-section (4). As to power to allow a reservist to reside out of the United Kingdom, see the Reserve Forces Acts, 1899 and 1906, p. 632 below; and see Army Reserve Regulations, paras. 73-76.

91. (1.) A Secretary of State, or any officer deputed by him for the purpose, may, if he think proper, on account of a soldier's lunacy, cause any soldier of the regular forces on his discharge, and his wife and child, or any of them, to be sent to the parish or union to which under the statutes for the time being in force he appears, from the statements made in his attestation paper and other available information, to be chargeable; and such soldier, wife, or child, if delivered after reasonable notice, in England or Ireland at the workhouse in which persons settled in such parish or union are received, and in Scotland to the inspector of poor of such parish, shall be received by the master or other proper officer of such workhouse or such inspector of poor, as the case may be:

Delivery of lunatic soldier on discharge with his wife or child at workhouse, or of dangerous lunatic at asylum.

Part II. (2.) Provided that a Secretary of State, or any officer deputed  
 ss. 91-92. by him for the purpose, where it appears to him that any such  
 soldier is a dangerous lunatic, and is in such a state of health as  
 not to be liable to suffer bodily or mental injury by his removal,  
 may, by order signified under his hand, send such lunatic direct  
 to an asylum, registered hospital, licensed house or other place in  
 which pauper lunatics can legally be confined; and for the purpose  
 of the said order the above-mentioned parish or union shall be  
 deemed to be the parish or union from which such lunatic is sent.

53 & 54  
 Vict. c. 5.

(3.) In England the lunatic shall be sent to the asylum, hospital,  
 house, or place to which a person in the workhouse aforesaid, on  
 becoming a dangerous lunatic, can by law be removed; and an  
 order of the Secretary of State or officer under this section shall be  
 of the same effect as a summary reception order within the meaning  
 of the Lunacy Act, 1890, and the like proceedings shall be taken  
 thereon as on an order under that Act.

25 & 26  
 Vict. c. 51.

(4.) The Secretary of State or officer, before making the said  
 order in respect of a lunatic who is liable to be delivered to the  
 inspector of poor of a parish in Scotland, may require the inspector  
 of poor of that parish to specify the asylum to which such lunatic if  
 in the parish would be sent, and it shall be the duty of such inspector  
 forthwith to specify such asylum, and thereupon the Secretary  
 of State or officer may make the said order for sending the lunatic  
 to that asylum; and such order shall be of the same effect as an  
 order by the sheriff within the meaning of section fifteen of the  
 Lunacy (Scotland) Act, 1862, and the like proceedings shall be taken  
 thereon as on an order under that section.

30 & 31  
 Vict. c. 118.

(5.) In the case of any such lunatic who is liable to be delivered  
 at a workhouse in Ireland at which persons settled in the said  
 union are received, a Secretary of State, or any officer deputed by  
 him for the purpose, may, by order under his hand, send such  
 lunatic to the asylum of the district in which such union is situate;  
 and such order shall be of the same effect as a warrant under the  
 hands and seals of two justices given under the provisions of  
 the tenth section of the Lunacy (Ireland) Act, 1867.

#### NOTE.

This section allows a Secretary of State, or an officer deputed by him for  
 the purpose, to send a lunatic soldier to the workhouse of the union to  
 which, according to the statements in his attestation paper and other available  
 information, he appears to be chargeable. If the Secretary of State, or the  
 deputed officer, considers the soldier to be a dangerous lunatic, he may order  
 him to be removed direct to the asylum to which the lunatic could be  
 removed if he had been first removed to the workhouse; *i.e.*, in England,  
 to the county or borough asylum.

As to disposal of lunatic soldiers on discharge, see K.R. 406-408.

Regulations  
 as to dis-  
 charge of  
 soldiers.

92. (1.) A soldier of the regular forces shall not be discharged  
 from those forces, unless by sentence of court-martial with ignominy,

or by order of the competent military authority, or by authority direct from His Majesty, and until duly discharged in manner provided by this Act and by regulations of the Secretary of State under this Act shall be subject to this Act. Part II.  
ss. 92-94.

(2.) To every soldier of the regular forces who is discharged, for whatever reason he is discharged, there shall be given a certificate of discharge, stating such particulars as may be from time to time required by regulations of a Secretary of State under this Act.

NOTE.

The terms of the attestation of a soldier bind him to serve so long as his services are required. Consequently the Crown has always a right to discharge him if his services are not required. When a soldier is discharged he receives a certificate of discharge, and a certificate of character; but in certain cases special certificates of discharge are issued in lieu of the ordinary certificates.

Until the formalities of the discharge are complete (which they are on the confirmation of the "proceedings on discharge," as to which see K.R., paras. 376-390) a soldier remains subject to military law; but any undue delay in carrying out the discharge would give good ground for complaint on the part of the soldier.

The certificates of discharge and character are signed by the prescribed authority, and delivered to the man on his last day of service. See Ch. X, para. 30, K.R., paras. 413-421.

*By sentence of court-martial.* Not a regimental court-martial; see s. 47 (5).

*Competent military authority.* See s. 101 and Rule 128.

*Authorities to enlist and attest Recruits.*

93. A Secretary of State may from time to time make and when made revoke and alter, a general or special order, making such regulations, giving such directions, and issuing such forms as he may think necessary or expedient, respecting the persons authorised to enlist recruits for His Majesty's regular forces, and for the purpose of such enlistment, and generally for carrying this part of this Act into effect; and any such order shall be of the same effect as if enacted in this Act. Regulation as to persons to enlist, and enlistment of soldiers.

NOTE.

See K.R., para. 261, and the Recruiting Regulations.

94. For the purposes of the attestation of soldiers in pursuance of this part of this Act :— Justices of the peace for the purposes of enlistment.

An officer in the United Kingdom or elsewhere, if authorised in that behalf under the regulations of a Secretary of State, also every person exercising the office of a magistrate in India or a colony, and also each of the following persons, shall have the authority of a justice of the peace and be deemed to be included in the expression "justice of the peace" wherever used in this part of this Act in relation to the attestation of soldiers; that is to say,

In India, any person duly authorised in that behalf by the Governor-General; and in the territories of any native state in India, the person performing the duties



Part II.  
ss. 94-96.

of the office of British resident or political agent therein, or any other person authorised in that behalf by the Governor-General of India ; and

In a colony, any person duly authorised in that behalf by the governor of the colony ; and

Beyond the limits of the United Kingdom, India, and a colony, any British consul-general, consul, or vice-consul, or person duly exercising the authority of a British consul.

NOTE.

It must be recollected that a justice of the peace can, in most cases, only act when within the county or borough for which he is justice.

The persons named in this section will have authority to attest, but not to enlist or re-engage soldiers, so that consuls, who were formerly authorised by the Mutiny Act to enlist soldiers, no longer have that power, unless expressly authorised by order of the Secretary of State under the last section.

The officers authorised to attest recruits are specified in the Recruiting Regulations, paras. 118, 119.

In Ireland a man is not to be taken for attestation before a magistrate appointed under the Towns Improvement Act, and in Scotland not before a magistrate who is not a justice of the peace.

For definitions of India and colony, see s. 190 (21) (23).

*Special provisions as to Persons to be Enlisted.*

Enlistment  
of aliens,  
negroes, &c.

95. (1.) Any person who is for the time being an alien may, if His Majesty think fit to signify his consent through a Secretary of State, be enlisted in His Majesty's regular forces, so, however, that the number of aliens serving together at any one time in any corps of the regular forces shall not exceed the proportion of one alien to every fifty British subjects, and that an alien so enlisted shall not be capable of holding any higher rank in His Majesty's regular forces than that of a warrant officer or non-commissioned officer :

(2.) Provided that, notwithstanding the above provisions of this section, any inhabitant of any British protectorate and any negro or person of colour, although an alien, may voluntarily enlist in pursuance of this Part of this Act, and when so enlisted, shall, while serving in His Majesty's regular forces, be deemed to be entitled to all the privileges of a natural-born British subject.

NOTE.

See Ch. X, paras. 27, 28.

The proviso to this section enables inhabitants of British protectorates, and negroes and persons of colour, although aliens, to be enlisted without any restriction in point of number, as if they were natural-born British subjects.

This section will apply to all persons enlisted under the enactments which are replaced by this section.

Claims of  
masters to  
apprentices.

96. The master of an apprentice in the United Kingdom who has been attested as a soldier of the regular forces may claim him



while under the age of twenty-one years as follows, and not otherwise : Part II.

ss. 96-97.

- (1.) The master, within one month after the apprentice left his service, must take before a justice of the peace the oath in that behalf specified in the First Schedule to this Act, and obtain from the justice a certificate of having taken such oath, which certificate the justice shall give in the form in the said schedule, or to the like effect :
- (2.) A court of summary jurisdiction within whose jurisdiction the apprentice may be, if satisfied on complaint by the master that he is entitled to have the apprentice delivered up to him, may order the officer under whose command the apprentice is to deliver him to the master, but if satisfied that the apprentice stated on his attestation that he was not an apprentice may, and if required by or on behalf of the said commanding officer shall, try the apprentice for the offence of making such false statement, and if need be may adjourn the case for the purpose :
- (3.) Except in pursuance of an order of a court of summary jurisdiction, an apprentice shall not be taken from His Majesty's service :
- (4.) An apprentice shall not be claimed in pursuance of this section unless he was bound for at least four years by a regular indenture, and was under the age of sixteen years when so bound :
- (5.) A master who gives up the indenture of his apprentice within one month after the attestation of such apprentice shall be entitled to receive to his own use so much of the bounty (if any) payable to such apprentice on enlistment as has not been paid to the apprentice before notice was given of his being an apprentice.

NOTE.

*Court of summary jurisdiction.* See ss. 166-169 and 190 (34)-(36)

97. The provisions of this part of this Act with respect to apprentices shall apply to a person who at the time of his attestation is an indentured labourer in a colony, with these qualifications, that such indentured labourer, if imported at the expense of the employer or of the colony in consideration of the indenture under which he is serving, may be claimed although above the age of twenty-one years, and though bound for a less period or at an older age than is above specified.

NOTE.

For definition of colony, see s. 190 (23).

Application  
of ap-  
prentice  
provisions  
to in-  
dentured  
labourers.

## Part II.

*Offences as to Enlistment.*

ss.

98-100.

Penalty on  
unlawful  
recruiting.

98. If a person without due authority—

- (1.) Publishes or causes to be published notices or advertisements for the purpose of procuring recruits for His Majesty's regular forces, or in relation to recruits for such forces ; or
- (2.) Opens or keeps any house, place of rendezvous, or office as connected with the recruiting of such forces ; or
- (3.) Receives any person under any such advertisement as afore-said ; or
- (4.) Directly or indirectly interferes with the recruiting service of such forces ;

he shall be liable on summary conviction to a fine not exceeding twenty pounds.

## NOTE.

*On summary conviction, i.e., before magistrates, see ss. 166-169.*

Recruits  
punishable  
for false  
answers.

99. (1.) If a person knowingly makes a false answer to any question contained in the attestation paper, which has been put to him by or by direction of the justice before whom he appears for the purpose of being attested, he shall be liable on summary conviction to be imprisoned with or without hard labour for any period not exceeding three months.

(2.) If a person guilty of an offence under this section has been attested as a soldier of the regular forces, he shall be liable, at the discretion of the competent military authority, to be proceeded against before a court of summary jurisdiction, or to be tried by court-martial for the offence.

## NOTE.

Sub-section (1). *On summary conviction, i.e., before magistrates, see ss. 166-169.*

Sub-section (2). The offender may be tried and punished in any place where he may for the time being happen to be (s. 159, as to courts-martial, and s. 166 as to civil courts of summary jurisdiction), as well as in the place where the offence was committed, that is to say, where he made the false answer.

A court of summary jurisdiction cannot entertain a charge of false answer on attestation, when the answer was made more than six months before the time when proceedings are commenced.

*Court of summary jurisdiction.* See definition in s. 190 (35).

*Competent military authority.* See definition in s. 101. Rule 128 (v) adds to the definition for the purposes of this section any officer having power to convene a district court-martial for the trial of the soldier.

This section extends to every soldier, whenever enlisted.

Under s. 2 of the Seamen and Soldiers' False Characters Act, 1906 (6 Edw. 7, c. 5) a person who uses, or gives for use, on enlistment a false statement as to character or previous employment is liable on summary conviction to a fine not exceeding twenty pounds.

*Miscellaneous as to Enlistment.*Validity of  
attestation  
and enlist-  
ment or  
re-engage-  
ment.

100. (1.) Where a person after his attestation on his enlistment, or the making of his declaration on re-engagement, has received pay as a soldier of the regular forces during three months, he shall be

deemed to have been duly attested and enlisted or duly re-engaged, as the case may be, and shall not be entitled to claim his discharge on the ground of any error or illegality in his enlistment, attestation, or re-engagement, or on any other ground whatsoever, save as authorised by this Act; and, if within the said three months such person claims his discharge, any such error or illegality or other ground shall not until such person is discharged in pursuance of his claim affect his position as a soldier in His Majesty's service, or invalidate any proceedings, act, or thing taken or done prior to such discharge.

Part II.  
—  
ss.  
100-101.

(2.) Where a person is in pay as a soldier in any corps of His Majesty's regular forces, such person shall be deemed for all the purposes of this Act to be a soldier of the regular forces, with this qualification, that he may at any time claim his discharge, but until he so claims and is discharged in pursuance of that claim he shall be subject to this Act as a soldier of the regular forces legally enlisted and duly attested under this Act.

(3.) Where a person claims his discharge on the ground that he has not been attested or re-engaged or not duly attested or re-engaged, his commanding officer shall forthwith forward such claim to the competent military authority, who shall as soon as practicable submit it to a Secretary of State, and if the claim appears well grounded the claimant shall be discharged with all convenient speed.

#### NOTE.

Sub-section (2). This meets the case of a man who has been receiving pay without ever having been legally attested or engaged. Such a case should but seldom arise under the present law and practice of enlistment, but if it should (as *e.g.*, if an alien has by making a false answer been enlisted without due authority), the above enactment will effectually prevent a man who has actually served from suddenly repudiating his liability to the rules of the service, and thus evading punishment when charged with or sentenced for an offence.

*Competent military authority.* See definition in section 101, and Rule 128.

This section extends to every soldier, whenever enlisted.

**101.** (1.) Any act or thing authorised or required by this Part of this Act to be done by, to, or before the competent military authority may be done by, to, or before the Commander-in-Chief or the Adjutant-General, or any officer prescribed in that behalf.

Definition for purposes of Part II of competent military authority and reserve.

(2.) For the purposes of this Part of this Act the expression "reserve" means the first class of the army reserve force.

#### NOTE.

*Prescribed.* See Rule 128, for the other officers who have been prescribed as the competent military authority for the purposes of Part II of the Army Act.

For the purposes of particular sections in this Part, and of transfer by consent, Rule 128 also prescribes other officers.

*Army reserve force, i.e.*, the army reserve under the Reserve Forces Act, 1882 (45 and 46 Vict., c. 48), s. 28: see ch. xi, paras. 13 *et seq.*

## PART III.

## Part III.

SS.

102-103.

## BILLETING AND IMPRESSMENT OF CARRIAGES.

This part relates only to the United Kingdom.

*Billeting of Officers and Soldiers.*

Suspension  
of 3 Chas. 1.  
c. 1;  
31 Chas. 2,  
c. 1;  
6 Anne (I),  
c. 14, as to  
billeting.

102. During the continuance in force of this Act, so much of any law as prohibits, restricts, or regulates the quartering or billeting of officers and soldiers on any inhabitant of this realm without his consent is hereby suspended, so far as such quartering or billeting is authorised by this Act.

## NOTE.

The Acts suspended by this section are in the case of England and Ireland those referred to in the marginal note to this section.

Obligation  
of constable  
to provide  
billets for  
officers,  
soldiers,  
and horses.

103. (1.) Every constable for the time being in charge at any place in the United Kingdom mentioned in the route issued to the commanding officer of any portion of His Majesty's regular forces shall, on the demand of such commanding officer, or of an officer or soldier authorised by him, and on production of such route, billet on the occupiers of victualling houses and other premises specified in this Act as victualling houses in that place such number of officers, soldiers, and horses entitled under this Act to be billeted as are mentioned in the route and stated to require quarters.

(2.) A route for the purposes of this part of this Act shall be issued under the authority of His Majesty, signified through a Secretary of State, and shall state the forces to be moved in pursuance of the route, and that statement shall be signed by such officer as the Commander-in-Chief may from time to time order in that behalf.

(3.) A route purporting to be issued and signed as required by this section shall be evidence until the contrary is proved of its having been duly issued and signed in pursuance of this Act, and if delivered to an officer or soldier by his commanding officer shall be a sufficient authority to such officer or soldier to demand billets, and when produced by an officer or soldier to a constable shall be conclusive evidence to such constable of the authority of the officer or soldier producing the same to demand billets in accordance with such route.

## NOTE.

See, generally, as to billeting and routes, Ch. IX, paras. 114-128.

Sub-section (1). *Constable*, see s. 120, and note, and s. 190 (38).

Sub-section (3). This sub-section provides that a route shall so to speak, prove itself, i.e., that it is not to be questioned except on evidence produced to show that it has not been duly issued or signed.

The necessary modifications in the application of this section to the militia, yeomanry, and volunteers are provided in s. 181 (3) (4).

**104.** (1.) The provisions of this part of this Act with respect to Part III. victualling houses shall extend to all inns, hotels, livery stables, or alehouses, also to the houses of sellers of wine by retail, whether **104-106.** British or foreign, to be drunk in their own houses or places there- Liability to unto belonging, and to all houses of persons selling brandy, spirits, provide billets. strong waters, cider, or metheglin by retail; and the occupier of a victualling house, inn, hotel, livery stable, alehouse, or any such house as aforesaid shall be subject to billets under this Act, and is in this Act included under the expression "keeper of a victualling house," and the inn, hotel, house, stables, and premises of such occupier are in this Act included under the expression "victualling house."

(2.) Provided that an officer or soldier shall not be billeted—

(a.) In any private house; nor

(b.) In any canteen held or occupied under the authority of a Secretary of State; nor

(c.) On persons who keep taverns only, being vintners of the City of London admitted to their freedom of the said company in right of patrimony or apprenticeship, notwithstanding the persons who keep such taverns have taken out licences for the sale of any intoxicating liquor; nor

(d.) In the house of any distiller kept for distilling brandy and strong waters, so as such distiller does not permit tipping in such house; nor

(e.) In the house of any shopkeeper whose principal dealing is more in other goods and merchandise than in brandy and strong waters, so as such shopkeeper does not permit tipping in such house; nor

(f.) In a house of a person licensed only to sell beer or cider not to be consumed on the premises; nor

(g.) In the house of residence of any foreign consul duly accredited as such.

**105.** (1.) All officers and soldiers of His Majesty's regular forces; and Officers, soldiers, and horses entitled to be billeted.

(2.) All horses belonging to His Majesty's regular forces; and

(3.) All horses belonging to the officers of such forces for which forage is for the time being allowed by His Majesty's regulations,

shall be entitled to be billeted.

#### NOTE.

The men and horses of the militia, yeomanry, and volunteers are, when these forces are subject to military law, entitled to be billeted by virtue of s. 181 (3) (4).

**106.** (1.) The keeper of a victualling house upon whom any officer, soldier, or horse is billeted shall receive such officer, soldier, or horse in his victualling house, and furnish there the accom- Accommodation and payment on billet.



Part III. <sup>ss.</sup> 106-107. modulation following: that is to say, lodging and attendance for the officer; and lodging, attendance, and food for the soldier; and stable room and forage for the horse, in accordance with the provisions of the Second Schedule to this Act.

(2.) Where the keeper of a victualling house on whom any officer, soldier, or horse is billeted desires, by reason of his want of accommodation or of his victualling house being full or otherwise, to be relieved from the liability to receive such officer, soldier, or horse in his victualling house, and provides for such officer, soldier, or horse in the immediate neighbourhood such good and sufficient accommodation as he is required by this Act to provide, and as is approved by the constable issuing the billets, he shall be relieved from providing the same in his victualling house.

(3.) There shall be paid to the keeper of a victualling house for the accommodation furnished by him in pursuance of this Act the prices for the time being authorised in this behalf by Parliament.

(4.) An officer or soldier demanding billets in pursuance of this Act shall, before he departs, and if he remains longer than four days, at least once in every four days, pay the just demands of every keeper of a victualling house on whom he and any officers and soldiers under his command, and his or their horses (if any), have been billeted.

(5.) If by reason of a sudden order to march, or otherwise, an officer or soldier is not able to make such payment to any keeper of a victualling house as is above required, he shall before he departs make up with such keeper of a victualling house an account of the amount due to him, and sign the same, and forthwith transmit the account so signed to a Secretary of State, who shall forthwith cause the amount named in such account as due to be paid.

#### NOTE.

Sub-section (1). The details respecting the food and forage to be furnished are contained in the second schedule: the prices to be paid are contained in the annual Act continuing this Act in force.

Sub-section (2). This sub-section shows clearly the obligation of the innkeeper to provide elsewhere accommodation for a soldier or horse billeted on him if he has not got it on his own premises, or if by reason of his house being full or otherwise, he desires to be rid of the liability. The constable is made judge of the sufficiency of the substituted accommodation.

Annual list  
of keepers of  
victualling  
houses  
liable to  
billets.

107. (1.) The police authority for any place may cause annually a list to be made out of all keepers of victualling houses within the meaning of this Act in such place, or any particular part thereof, liable to billets under this Act, specifying the situation and character of each victualling house, and the number of soldiers and horses who may be billeted on the keeper thereof.

(2.) The police authority shall cause such list to be kept at some convenient place open for inspection at all reasonable times by persons interested, and any person who feels aggrieved either by



being entered in such list, or by being entered to receive an undue Part III.  
proportion of officers, soldiers, or horses, may complain to a court of  
summary jurisdiction, and the court, after such notice as the court  
think necessary to persons interested, may order the list to be  
amended in such manner as the court may think just.

ss.  
107-108.

NOTE.

Sub-section (1). *Police authority.* See definition in s. 190 (39). See also s. 120.

The list merely determines the proportion in which the billets are to be distributed among the keepers of victualling houses, and does not relieve them from their liability to find accommodation for any number for whom quarters are required. *Sharratt v. Scotney*, L.R. [1892] 2 Q.B. 479.

108. The following regulations shall be observed with respect to billeting in pursuance of this Act ; that is to say, Regulations  
as to grant  
of billets.

- (1.) No more billets shall at any time be ordered than there are effective officers, soldiers, and horses present to be billeted :
- (2.) All billets, when made out by the constable, shall be delivered into the hands of the commanding officer or non-commissioned officer who demanded the billets, or of some officer authorised by such commanding officer :
- (3.) If a keeper of a victualling house feels aggrieved by having an undue proportion of officers, soldiers, or horses billeted on him, he may apply to a justice of the peace, or if the billets have been made out by a justice may complain to a court of summary jurisdiction, and the justice or court may order such of the officers, soldiers, or horses to be removed and to be billeted elsewhere as may seem just :
- (4.) A constable having authority in a place mentioned in the route may act for the purposes of billeting in any locality within one mile from such place, unless some constable ordinarily having authority in such locality is present and undertakes to billet therein the due proportion of officers, soldiers, and horses :
- (5.) The regulations with respect to billets contained in the Second Schedule to this Act shall be duly observed by the constable :
- (6.) A justice of the peace, on the request of an officer or non-commissioned officer authorised to demand billets, may vary a route by adding any place or omitting any place, and also may direct billets to be given above one mile from a place mentioned in the route :
- (7.) A justice of the peace may require a constable to give an account in writing of the number of officers, soldiers, and horses billeted by such constable, together with the names

## Part III.

ss.

108-111.

of the keepers of victualling houses on whom such officers, soldiers, and horses are billeted, and the locality of such victualling houses.

## NOTE.

Paragraph (3). *Court of summary jurisdiction.* See definition in s. 190 (35).

*Offences in relation to Billeting.*

Offences by  
constables.

109. If a constable commits any of the offences following; that is to say,

- (1.) Billets any officer, soldier, or horse on any person not liable to billets without the consent of such person; or
- (2.) Receives, demands, or agrees for any money or reward whatsoever to excuse or relieve a person from being entered in a list as liable or from his liability to billets, or from any part of such liability; or
- (3.) Billets or quarters on any person or premises, without the consent of such person or the occupier of such premises, any person or horse not entitled to be billeted; or
- (4.) Neglects or refuses after sufficient notice is given to give billets demanded for any officer, soldier, or horse entitled to be billeted;

he shall, on summary conviction, be liable to a fine of not less than forty shillings, and not exceeding ten pounds.

## NOTE.

*On summary conviction.* See ss. 166-168.

Offences by  
keepers of  
victualling  
houses.

110. If a keeper of a victualling house commits any of the offences following; that is to say,

- (1.) Refuses or neglects to receive any officer, soldier, or horse billeted upon him in pursuance of this Act, or to furnish such accommodation as is required by this Act; or
- (2.) Gives or agrees to give any money or reward to a constable to excuse or relieve him from being entered in a list as liable or from his liability to billets, or any part of such liability; or
- (3.) Gives or agrees to give to any officer or soldier billeted upon him in pursuance of this Act any money or reward in lieu of receiving an officer, soldier, or horse, or furnishing the said accommodation;

he shall, on summary conviction, be liable to a fine of not less than forty shillings and not exceeding five pounds.

## NOTE.

*On summary conviction.* See ss. 166-168.

Offences by  
officers or  
soldiers.

111. (1.) If any officer quarters or causes to be billeted any officer, soldier, or horse otherwise than is allowed by this Act upon any person, he shall be guilty of a misdemeanor.

(2.) If any officer or soldier commits any offence in relation to billeting for which he is liable to be punished under Part One

of this Act, other than an offence in respect of which any other Part III. remedy is given by this Part of this Act to the person aggrieved he shall, upon summary conviction, be liable to a fine not exceeding fifty pounds. ss.  
111-112.

(3.) A certificate of a conviction for an offence under this section shall be transmitted by the court making such conviction to a Secretary of State.

NOTE.

This section punishes with a fine on summary conviction all the offences in relation to billeting which have been made military offences by s. 30, except those for which the injured person can obtain compensation through a court of summary jurisdiction under s. 119.

*Impressment of Carriages.*

112. (1.) Every justice of the peace in the United Kingdom having jurisdiction in any place mentioned in a route issued to the commanding officer of any portion of His Majesty's regular forces shall, on the demand of such commanding officer, or of an officer or non-commissioned officer authorised by him, and on production of such route, issue his warrant requiring some constable or constables having authority in such place to provide, within a reasonable time to be named in the warrant, such carriages, animals, and drivers as are stated to be required for the purpose of moving the regimental baggage and regimental stores of the forces mentioned in the route in accordance with the route; and the constable or constables shall execute such warrant, and persons having carriages and animals suitable for the said purpose shall, when ordered by a constable in pursuance of such warrant, furnish the same in a state fit for use for the aforesaid purpose. Supply of  
carriages,  
&c., for  
regimental  
baggage and  
stores on  
the march.

(2.) The route for the purpose of this section shall be such route as is mentioned in the foregoing provisions of this Part of this Act with respect to billeting.

(3.) A route purporting to be issued and signed as required by those provisions, if delivered to an officer or non-commissioned officer by his commanding officer, shall be a sufficient authority to such officer or non-commissioned officer to demand carriages and animals in pursuance of this Act, and when produced by an officer or non-commissioned officer shall be conclusive evidence to a justice and constable of the authority of the officer or non-commissioned officer producing the same to demand carriages and animals in accordance with such route.

(4.) The warrant ordering carriages, animals, and drivers to be provided shall specify the number and description of the carriages, and also the places from and to which the same are to travel, and the distances between such places.

(5.) When sufficient carriages or animals cannot be procured within the jurisdiction of the said justice, any justice having jurisdiction in the next adjoining place shall, by a like course of proceeding, supply the deficiency.

Part III. (6.) A fee of one shilling and no more shall be paid for the  
 — warrant by the officer or non-commissioned officer applying for  
 ss. the same, and shall be paid to the clerk of the justice.  
 112-113.

## NOTE.

See, generally, as to impressment of carriages, Ch. IX, paras. 129-134.

Sub-section (1). The same route is in practice used to obtain both billets and carriages.

*For the purpose of moving the regimental baggage and stores.* Carriages can only be impressed for this purpose, and use of them for any other purpose is penal (s. 31 (5)), except in cases of emergency, which are provided for by s. 115. The term "carriage" has not in this Act the popular meaning of a conveyance for persons only, but means a waggon, cart, or any vehicle suitable for carrying baggage.

Payment  
for and  
regulations  
as to  
carriages,  
animals, &c.

113. (1.) There shall be paid in respect of the carriages and animals furnished in pursuance of this Part of this Act the rates specified in the Third Schedule to this Act and the regulations contained in that schedule with respect to the carriages and animals furnished shall be duly observed.

(2.) The following authorities; that is to say,

(a.) In England, the court of general or quarter sessions of a county or of a borough subject to the Municipal Corporations Act, 1882; and

(b.) In Scotland, the commissioners of supply of a county or the magistrates of a Royal or Parliamentary burgh; and

(c.) In Ireland, the grand jury for a county, a county of a city, a county of a town and city, or a city or town and county, also any council of any such county, town, or city having by law the fiscal powers of a grand jury,

may from time to time, as respects places within their jurisdiction, by order increase the rates authorised in the said schedule by such amount in respect of each rate, not exceeding one third, as may seem reasonable, and the amount of such increase shall be notified in writing by the justice granting a warrant in pursuance of this Act to the person demanding the warrant.

(3.) The order shall specify the average price of hay and oats at the nearest market town at the time of fixing such increased rates, and the order shall not be in force for more than ten days beyond the next meeting of such authority, but may be renewed from time to time by a fresh order or orders, and while in force shall have effect as part of the said schedule.

(4.) A copy of every such order, duly authenticated, shall be transmitted to a Secretary of State within three days after the making thereof.

(5.) The officer or non-commissioned officer who demands carriages or animals in pursuance of this part of this Act shall pay the sums due in respect of the same to the owners or drivers of the

carriages or animals, and one-third part of such payment shall in Part III. each case, if required, be made before the carriage is loaded ; and such payments shall be made, if required, in the presence of a justice or constable. ss. 113-115.

(6.) If an officer or non-commissioned officer is from any cause unable to pay the amount due to the owner or driver of any carriage or animal, he shall make up with such owner or driver and sign an account of the amount due to him, and forthwith transmit the account so signed to a Secretary of State, who shall forthwith cause the amount named therein to be paid to such owner or driver.

114. (1.) The police authority for any place may cause annually a list to be made out of all persons in such place, or any particular part thereof, liable to furnish carriages and animals under this Act, and of the number and description of the carriages and animals of such persons ; and where a list is so made, any justice may by warrant require any constable or constables having authority within such place to give from time to time, on demand by an officer or non-commissioned officer under this Act, orders to furnish carriages and animals, and such warrant shall be executed as if it were a special warrant issued in pursuance of this Act on such demand, and the orders shall specify the like particulars as such special warrant. Annual list of persons liable to supply carriages.

(2.) The police authority shall cause such list to be kept at some convenient place open for inspection at all reasonable times by persons interested, and any person who feels aggrieved either by being entered in such list, or by being entered to furnish any number or description of carriages or animals which he is not liable to furnish, may complain to a court of summary jurisdiction, and the court, after such notice as the court think necessary to persons interested, may order the list to be amended, in such manner as the court may think just.

(3.) All orders given by constables for furnishing carriages and animals shall, as far as possible, be made from such list in regular rotation.

NOTE.

*Police authority.* For definition see s. 190 (39).

115. (1.) His Majesty by order, distinctly stating that a case of emergency exists, and signified by a Secretary of State, and also in Ireland the Lord Lieutenant by a like order, signified by the Chief Secretary or Under Secretary, may authorise any general or field officer commanding His Majesty's regular forces in any military district or place in the United Kingdom to issue a requisition under this section (hereinafter referred to as a requisition of emergency). Supply of carriages and vessels in case of emergency.

(2.) The officer so authorised may issue a requisition of emergency under his hand, reciting the said order, and requiring justices of



Part III. the peace to issue their warrants for the provision, for the purpose  
s. 115. mentioned in the requisition, of such carriages and animals as may be provided under the foregoing provisions, and also of carriages of every description, and of horses of every description, whether kept for saddle or draught, and also of vessels (whether boats, barges, or other) used for the transport of any commodities whatever upon any canal or navigable river.

(3.) A justice of the peace, on demand by an officer of the portion of His Majesty's forces mentioned in a requisition of emergency, or by an officer of a Secretary of State authorised in this behalf, and on production of the requisition, shall issue his warrant for the provision of such carriages, animals, and vessels as are stated by the officer producing the requisition of emergency to be required for the purpose mentioned in the requisition; the warrant shall be executed in the like manner, and all the provisions of this Act as to the provision or furnishing of carriages and animals, including those respecting fines on officers, non-commissioned officers, justices, constables, or owners of carriages or animals, shall apply in like manner as in the case where a justice issues, in pursuance of the foregoing provisions of this Act, a warrant for the provision of carriages and animals, and shall apply to vessels as if the expression carriages included vessels.

(4.) A Secretary of State shall cause due payment to be made for carriages, animals, and vessels furnished in pursuance of this section, and any difference respecting the amount of payment for any carriage, animal, or vessel shall be determined by a county court judge having jurisdiction in any place in which such carriage, animal, or vessel was furnished or through which it travelled in pursuance of the requisition.

(5.) Canal, river, or lock tolls are hereby declared not to be demandable for vessels while employed in any service in pursuance of this section or returning therefrom. And any toll collector who demands or receives toll in contravention of this exemption, shall, on summary conviction, be liable to a fine not exceeding five pounds nor less than ten shillings.

(6.) A requisition of emergency, purporting to be issued in pursuance of this section, and to be signed by an officer therein stated to be authorised in accordance with this section, shall be evidence, until the contrary is proved, of its being duly issued and signed in pursuance of this Act, and if delivered to an officer of His Majesty's forces or of a Secretary of State shall be a sufficient authority to such officer to demand carriages, animals, and vessels in pursuance of this section, and when produced by such officer shall be conclusive evidence to a justice and constable of the authority of such officer to demand carriages, animals, and vessels in accordance with such requisition; and it shall be lawful to convey on such carriages, animals, and vessels, not only the



baggage, provisions, and military stores of the troops mentioned in Part III. the requisition of emergency, but also the officers, soldiers, servants, women, children, and other persons of and belonging to the same. 88.  
115-116.

(7.) Whenever a proclamation ordering the Army Reserve to be called out on permanent service or an order for the embodiment of the militia is in force, the order of His Majesty authorising an officer to issue a requisition of emergency may authorise him to extend such requisition to the provision of carriages, animals, and vessels for the purpose of being purchased, as well as of being hired, on behalf of the Crown.

(8.) Where a justice on demand by an officer and on production of a requisition of emergency, has issued his warrant for the provision of any carriages, animals, or vessels, and any person ordered in pursuance of such warrant to furnish a carriage, animal, or vessel refuses or neglects to furnish the same according to the order, then, if a proclamation ordering the Army Reserve to be called out on permanent service or an order for the embodiment of the militia is in force, the said officer may seize (and if need be by force) the said carriage, animal, or vessel, and may use the same in like manner as if it had been furnished in pursuance of the order, but the said person shall be entitled to payment for the same in like manner as if he had duly furnished the same according to the order.

NOTE.

Carriages and horses of every description and barges and other vessels used in inland navigation may under this section be impressed for any military purposes mentioned in the requisition signed by the general or field officer in command; and may therefore be impressed for the conveyance of persons as well as of baggage. The expression "horses" includes mules and other beasts of burden or draught, s. 190 (40).

Sub-section (4). *County Court Judge*. For definition as respects Scotland and Ireland, see s. 190 (37).

Sub-section (6). The requisition of emergency is made to prove itself, so to speak; see note to s. 103.

Sub-sections (7) and (8) were added by the National Defence Act, 1888 (51 & 52 Vict. c. 31).

*Offences in relation to the Impressment of Carriages.*

116. Any constable who—

- (1.) Neglects or refuses to execute any warrant of a justice requiring him to provide carriages, animals, or vessels; or Offences by  
constables.
- (2.) Receives, demands, or agrees for any money or reward whatsoever to excuse or relieve any person from being entered in a list as liable to furnish, or from being required to furnish, or from furnishing any carriage, animal, or vessel; or
- (3.) Orders any carriage, animal, or vessel to be furnished for any person or purpose or on any occasion for and on which it is not required by this Act to be furnished;

(M.L.)

Part III. shall, on summary conviction, be liable to a fine of not less than twenty shillings nor more than twenty pounds.

ss.

116-119.

NOTE.

*On summary conviction.* See ss. 166-168.

Offences by persons ordered to furnish carriages, animals, or vessels.

117. A person ordered by any constable in pursuance of this Act to furnish a carriage, animal, or vessel who—

- (1.) Refuses or neglects to furnish the same according to the orders of such constable and this Act; or
- (2.) Gives or agrees to give to a constable or to any officer or non-commissioned officer any money or reward whatsoever to be excused from being entered in a list as liable to furnish, or from being required to furnish, or from furnishing, or in lieu of furnishing, any carriage, animal, or vessel in pursuance of this Act; or
- (3.) Does any act or thing by which the execution of any warrant or order for providing or furnishing carriages, animals, or vessels is hindered,

shall, on summary conviction, be liable to pay a fine of not less than forty shillings nor more than ten pounds.

NOTE.

*On summary conviction.* See ss. 166-168.

Offences by officers or soldiers.

118. (1.) Any officer or soldier who commits any offence in relation to the impressment of carriages for which he is liable to be punished under Part I of this Act, other than an offence in respect of which any other remedy is given by this Part of this Act to the person aggrieved, shall, on summary conviction, be liable to a fine not exceeding fifty pounds nor less than forty shillings.

(2.) A certificate of a conviction for an offence under this section shall be transmitted by the court making such conviction to a Secretary of State.

NOTE.

This section punishes with a fine on summary conviction (ss. 166-168) the offences committed by officers and soldiers in respect of impressment of carriages, which are made military offences by s. 31, except those for which compensation can be recovered through a court of summary jurisdiction, under s. 119. See also s. 162.

For definition of court of summary jurisdiction, see s. 190 (35).

### *Supplemental Provisions as to Billeting and Impressment of Carriages.*

Application to court of summary jurisdiction respecting sums due to keepers of victualling houses or owners of carriages, &c.

119. (1.) The following persons, that is to say,
- (a.) If any officer or soldier fails to comply with the provisions of this part of this Act with respect to the payment of a sum due to a keeper of a victualling house or in respect of carriages or animals, or to the making up of an account of the sum due, the person to whom the sum is due; or

(b.) If a keeper of a victualling house suffers any ill-treatment by violence, extortion, or making disturbance in billets from any officer or soldier billeted upon him, or if the owner or driver of any carriage, animal, or vessel furnished in pursuance of this part of this Act suffers any ill-treatment from any officer or soldier, the person suffering such ill-treatment, but, when there is an officer commanding such officer or soldier present at the place, only after first making due complaint, if practicable, to such commanding officer,

Part III.  
ss.  
119-120.

may apply to a court of summary jurisdiction, and such court, if satisfied on oath of such failure or such ill-treatment, and of the amount fairly due to the applicant, including the costs of his application to the court of summary jurisdiction, shall certify the same to a Secretary of State, who shall forthwith cause the amount due to be paid.

(2.) Provided that the Secretary of State, if it appears to him that the amount named in such certificate is not justly due, or is in excess of the amount justly due, may direct a complaint to be made to a court of summary jurisdiction for the county, borough, or place for which the court giving the certificate acted, and the court after hearing the case may by order confirm the said certificate, or vary it in such manner as to the court seems just.

NOTE.

This section allows an innkeeper or owner of an impressed carriage aggrieved by the non-payment of a sum due to him, or by ill-treatment on the part of an officer or soldier, on failure to obtain redress from the commanding officer, to apply to a court of summary jurisdiction, who may certify to the Secretary of State the amount which should be paid.

For definition of court of summary jurisdiction, see s. 190 (35).

120. (1.) A constable shall observe the directions given to him for the due execution of this part of this Act by the police authority; and the police authority, or any member thereof, and every justice of the peace may, if it seem necessary, and in the absence of a constable shall, themselves or himself, exercise the powers and perform the duties by this Part of this Act vested in or imposed on a constable, and in such case every such person is in this Part of this Act included in the expression "constable."

Provisions  
as to  
constables,  
police  
authorities,  
and justices.

(2.) A person having or executing any military office or commission in any part of the United Kingdom shall not, directly or indirectly, be concerned, as a justice or constable, in the billeting of or appointing quarters for any officer or soldier or horse of the corps, or part of a corps, under his immediate command, and all warrants, acts, and things made, done and appointed by such person for or concerning the same shall be void.

NOTE.

Sub-section (1). *Police authority.* See definition in s. 190 (39).

The duty of billeting is thrown by this Act on the police, as successors

Part III. to the parish constables who formerly had that duty. In practice, in those places where troops are frequently passing there are officers commonly known as billet masters, who have the management of the billeting.

ss.  
120-122.  
Fraudulent  
claim for  
carriages,  
animals, &c.

121. If any person—

- (1.) Forges or counterfeits any route or requisition of emergency or knowingly produces to a justice or constable any route or requisition of emergency so forged or counterfeited; or
- (2.) Personates or represents himself to be an officer or soldier authorised to demand any billet, or any carriage, animal, or vessel, or to be entitled to be billeted, or to have his horse billeted; or
- (3.) Produces to a justice or constable a route or requisition which he is not authorised to produce, or a document falsely purporting to be a route or requisition,

he shall be liable, on summary conviction, to imprisonment for a period not exceeding three months, with or without hard labour, or to a fine not less than twenty shillings and not more than five pounds.

NOTE.

*On summary conviction.* See ss. 166-168.

#### Part IV.

#### PART IV.

### GENERAL PROVISIONS.

#### *Supplemental Provisions as to Courts-Martial.*

Royal  
warrant  
required for  
convening  
and con-  
firming  
general  
courts-  
martial.

122. (1.) His Majesty may, subject to the provisions of this Act, by any warrant or warrants under His Sign Manual, in such form as His Majesty may from time to time direct, from time to time—

- (a.) Convene or authorise any qualified officer to convene a general court-martial for the trial under this Act of any person subject to military law; and
- (b.) Give a general authority to any qualified officer to convene general courts-martial for the trial, under this Act, of such persons subject to military law as may for the time being be under or within the territorial limits of his command; and
- (c.) Empower any qualified officer to delegate to any officer under his command not below the degree of field officer, a general authority to convene general courts-martial for the trial, under this Act, of such persons subject to military law, as are for the time being under or within the territorial limits of his command; and

(d.) Reserve for confirmation by His Majesty, or empower any qualified officer to confirm, the findings and sentences of general courts-martial ; and Part IV.  
s. 122.

(e.) Empower any officer for the time being authorised to confirm the findings and sentences of general courts-martial to reserve for confirmation findings or sentences of general courts-martial, or to delegate a power of confirming such findings or sentences to any officer under his command not below the degree of field officer ; and

(f.) Revoke any warrant for the time being in force, or any part of any warrant, leaving the remainder in full force ;

Provided that where it appears to His Majesty that in any place out of the United Kingdom, where no field officer is for the time being in command, hardship would be inflicted on persons accused of offences by reason of there being no means of speedily trying such persons for offences, a warrant under this section may empower an officer to delegate to an officer not below the degree of captain any authority and power authorised under this section to be delegated to a field officer.

(2.) The same officer may or may not be appointed convening and confirming officer.

(3.) The power of convening general courts-martial, and of confirming the findings and sentences of general courts-martial, or either of such powers, may be granted subject to such restrictions, reservations, exceptions, and conditions as to His Majesty may seem meet, and when delegated by any officer empowered in that behalf may, subject to the provisions of any warrant granting him such power, be delegated subject to such restrictions, reservations, exceptions, and conditions as to such officer may seem fit.

(4.) Warrants under this section may be addressed to officers by name or by designation of their offices, or partly in one way and partly in the other, and any warrant may or may not, according to the terms of such warrant and the mode in which the same is addressed, be limited to an officer named, or be extended to a person for the time being performing the duties of the office named, or be extended to the successors in command of an officer.

(5.) Any warrant of His Majesty issued in pursuance of this section shall be of the same force as if the provisions thereof were enacted by this Act.

(6.) "Qualified officer" for the purposes of this Act, in so far as it relates to convening or confirming the findings and sentences of general courts-martial, means the Commander-in-Chief and any officer not below the rank of a field officer commanding for the time being any body of the regular forces either within or without His Majesty's dominions ; it also includes the Lord Lieutenant of Ireland, the Governor-General of India, and a Governor of any



Part IV. colony on whom the command of any body of regular forces may be conferred by His Majesty.

ss.

122-124.

NOTE.

See ch. V, paras. 19-23 and 91-95.

See forms of Court-Martial Warrants, p. 599 *infra*.

Authority of officer empowered to convene general courts-martial required for convening and confirming district courts-martial.

123. (1.) Any officer or person authorised to convene general courts-martial may—

(a.) Convene a district court-martial for the trial under this Act of any person under his command who is subject to military law; and

(b.) Empower any person under his command not below the rank of captain to convene a district court-martial for the trial under this Act of any person under the command of such last mentioned officer who is subject to military law; and

(c.) Confirm the finding and sentence of any district court-martial, or empower any officer whom he has power to authorise to convene district courts-martial to confirm the finding and sentence of any district court-martial.

(2.) The same officer may or may not be appointed convening and confirming officer under this section.

(3.) The power of convening, and of confirming the findings and sentences of, district courts-martial, or either of such powers, may be granted under this section, subject to such restrictions, reservations, exceptions, and conditions as to the officer granting such power may seem meet.

(4.) Any authority under this section for convening district courts-martial may be addressed to an officer by name or by designation of his office, or partly in one way and partly in the other, and may or may not, according to the terms thereof and the mode in which the same is addressed, be limited to an officer named, or be extended to a person holding for the time being or performing the duties of the office, or be extended to the successors in command of such officer.

NOTE.

Sub-section 1 (b) and (c). Under A.O. of 6th January, 1905, general officers commanding-in-chief are to delegate the power of convening and confirming district courts-martial to such officers as they think advisable, not below the rank of colonel.

Right of person tried to copy of proceedings of court-martial.

124. Any person tried by a court-martial shall be entitled, on demand, at any time in the case of a general court-martial within seven years, and in the case of any other court-martial within three years after the confirmation of the finding and sentence of the court, to obtain from the officer or person having the custody of proceedings of such court a copy thereof, including the proceedings with respect to the revision and confirmation thereof, upon payment for the same at the prescribed rate, not exceeding twopence for



every folio of seventy-two words, and for the purposes of this section the proceedings of courts-martial shall be preserved in the prescribed manner.

Part IV.  
ss.  
124-126.

NOTE.

*Prescribed rate.* See Rule 99. If an application is made for a copy of part only of the proceedings, it should be complied with.

*Prescribed manner.* See Rule 98, and K.R. para. 1925.

125. (1.) Every person required to give evidence before a court-martial may be summoned or ordered to attend in the prescribed manner.

Summoning and privilege of witnesses at courts-martial.

(2.) Every person attending in pursuance of such summons or order as a witness before any court-martial shall, during his necessary attendance in or on such court, and in going to and returning from the same, have the same privilege from arrest as he would have if he were a witness before a superior court of civil jurisdiction.

NOTE.

*Prescribed manner.* See Rule 78.

*Privilege from arrest.* This privilege is from arrest on civil process, as, *e.g.*, for debt, while going to the place of trial, attending there, and returning home, or as it is expressed, *eundo, morando, redeundo*. There is no privilege from arrest on any criminal process, as *e.g.*, on a charge for a crime. The courts are disposed to be liberal in determining what is reasonable time for going, staying, or returning; thus, a witness in a cause tried on Friday and arrested on Saturday evening when entering the coach to return home was held to be improperly arrested. The remedy for an improper arrest is to apply to the court on whose process the arrest took place, or to apply for a *habeas corpus*.

126. (1.) Where any person who is not subject to military law commits any of the following offences; that is to say,

Misconduct of civilian at court-martial.

(a.) On being duly summoned as a witness before a court-martial, and after payment or tender of the reasonable expenses of his attendance, makes default in attending; or

(b.) Being in attendance as a witness—

(i.) Refuses to take an oath, legally required by a court-martial to be taken; or

(ii.) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him; or

(iii.) Refuses to answer any question to which a court-martial may legally require an answer,

the president of the court-martial may certify the offence of such person under his hand to any court of law in the part of His Majesty's dominions where the offence is committed which has power to punish witnesses if guilty of like offences in that court, and that court may thereupon inquire into such alleged offence, and after examination of any witnesses that may be produced against or for the person so accused, and after hearing any statement that

Part IV. may be offered in defence, if it seem just, punish such witness in like manner as if he had committed such offence in a proceeding in that court.

ss.

126-127.

(2.) Where a person not subject to military law when examined on oath or solemn declaration before a court-martial wilfully gives false evidence, he shall be liable on indictment or information to be convicted of and punished for the offence of perjury, or the offence by whatever name called in the part of His Majesty's dominions in which the offence is tried which, if committed in England, would be perjury.

(3.) Where a person not subject to military law is guilty of any contempt towards a court-martial, by using insulting or threatening language, or by causing any interruption or disturbance in its proceedings, or by printing observations or using words calculated to influence the members of or witnesses before such court, or to bring such court into disrepute, the president of the court-martial may certify the offence of such person, under his hand, to any court of law in the part of His Majesty's dominions where the offence is committed which has power to commit for contempt, and that court may thereupon inquire into such alleged offence, and after hearing any witnesses that may be produced against or on behalf of the person so accused, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of such person in like manner as if he had been guilty of contempt of that court.

#### NOTE.

Sub-section (3). The object of this sub-section is to enable courts-martial to obtain the punishment of civilians guilty of contempt of court. Usually exclusion from the court will be the best mode of dealing with the case; care being taken not to use any unnecessary force. If it is requisite to apply to a court, the application should be made in England or Ireland to the High Court of Justice; and in Scotland to the Court of Session.

The certificate need not be in any particular form, but should be addressed to the court to which the certificate is to be sent, and should state the name, address, and description of the person who has committed the offence, and the offence which he has committed. It will usually be desirable to make a formal application to the court to act upon the certificate.

A civilian witness, if abroad, cannot be compelled to attend a court-martial in the United Kingdom.

Court-martial governed by English law only.

127. A court-martial under this Act shall not, as respects the conduct of its proceedings, or the reception or rejection of evidence, or as respects any other matter or thing whatsoever, be subject to the provisions of the Indian Evidence Act, 1872, or to any Act, law, or ordinance of any legislature whatsoever other than the Parliament of the United Kingdom.

#### NOTE.

A soldier, wherever he goes, carries with him the military law of his country, that is to say. the Army Act. The Indian Evidence Act, 1872, enacted

that the law of evidence of that country should apply to courts-martial, and by inadvertence this was made apparently to apply to British courts-martial, consequently it was thought necessary to reverse the Indian enactment.

Part IV.

—  
ss.  
127-130.  
Rules of evidence to be the same as in civil courts.

128. The rules of evidence to be adopted in proceedings before courts-martial shall be the same as those which are followed in civil courts in England; and no person shall be required to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court.

NOTE.

Practically this section is merely a declaration of the law, as even without it, military courts would be bound to follow the rules of evidence in civil courts. As to evidence generally, see ch. VI, and Rules 73-86.

The Criminal Evidence Act, 1898, has been applied to courts-martial. See Rule 73 (B).

129. Whereas it is expedient to make provision respecting the conduct of counsel when appearing on behalf of the prosecution or defence at courts-martial in pursuance of rules under this Act, be it therefore enacted as follows:—

Position of counsel at courts-martial.

(1.) Any conduct of a counsel which would be liable to censure, or a contempt of court, if it took place before His Majesty's High Court of Justice in England, shall likewise be deemed liable to censure, or a contempt of court, in the case of a court-martial; and the rules laid down for the practice of courts-martial and the guidance of counsel shall be binding on counsel appearing before such courts-martial, and any wilful disobedience of such rules shall be professional misconduct, and, if persevered in, be deemed a contempt of court.

(2.) Where a counsel is guilty of conduct liable to censure, or a contempt of court, such offence shall be deemed to be an offence within the meaning of section one hundred and twenty-six of this Act, and the president of the court-martial may certify the same to a court of law accordingly; and the court of law to which the same is certified shall deal with such offence in the same manner as if it had been committed in a proceeding before that court.

(3.) A court-martial may, by order under the hand of the president, cause a counsel to be removed from the court who is guilty of such an offence as may, in the opinion of the court-martial, require his removal from court, but in every such case the president shall certify the offence committed to a court of law in manner provided by the above-mentioned section.

NOTE.

See as to counsel, Rules 88 to 94.

Sub-section (3). The removal of a counsel from the court could only become requisite under very grave circumstances.

130. (1.) Where it appears on the trial by court-martial of a person charged with an offence that such person is by reason of insanity unfit to take his trial, the court shall find specially that

Provision in case of insane persons.

Part IV. fact; and such person shall be kept in custody in the prescribed manner until the directions of His Majesty thereon are known, or until any earlier time at which such person is fit to take his trial.

ss.

130-131.

(2.) Where on the trial by court-martial of a person charged with an offence it appears that such person committed the offence, but that he was insane at the time of the commission thereof, the court shall find specially the fact of his insanity, and such person shall be kept in custody in the prescribed manner until the directions of His Majesty thereon are known.

(3.) In either of the above cases His Majesty may give orders for the safe custody of such person during his pleasure in such place and in such manner as His Majesty thinks fit.

(4.) A finding under this section shall be subject to confirmation in like manner as any other finding.

(5.) If a person imprisoned or undergoing detention by virtue of this Act becomes insane, then, without prejudice to any other provision for dealing with such insane person, a Secretary of State in any case, and in the case of a person confined in India the Governor-General of India, or the Governor of any presidency in which the person is confined, and in the case of a person confined in a colony the Governor of that colony, may, upon a certificate of such insanity by two qualified medical practitioners, order the removal of such person to an asylum or other proper place for the reception of insane persons in the United Kingdom, India, or the colony, according as the person is confined in the United Kingdom, India, or the colony, there to remain for the unexpired term of his imprisonment or detention, and upon such person being certified in the like manner to be again of sound mind, may order his removal to any prison or detention barrack in which he might have been confined if he had not become insane, there to undergo the remainder of such punishment.

#### NOTE.

This section provides for dealing with insane persons who stand charged with offences, and with prisoners who become insane. Similar provisions are contained in ss. 68, 80 of the Naval Discipline Act (29 & 30 Vict. c. 109).

As to insanity in connection with responsibility for crime, see ch. VIII, para. 9.

Sub-section (2). *Prescribed.* See Rule 57 (C) and note.

Sub-section (5). *Imprisoned or undergoing detention by virtue of this Act.* This refers only to persons under sentence, and not to persons in custody awaiting trial.

So much of this sub-section as relates to a person imprisoned in England is repealed by the Criminal Lunatics Act 1884 (47 & 48 Vict. c. 64, s. 17).

#### *General Provisions as to Prisons and Detention Barracks.*

131. (1.) A Secretary of State may from time to time make arrangements with the Governor-General of India or the Governor of a colony for the reception in any prison in India or in such colony of prisoners under this Act, and of deserters or absentees without leave from His Majesty's service, on payment of such sums

as are provided by the arrangement, and the governor of any prison to which any such arrangement relates shall be under the same obligation as the governor of a prison in the United Kingdom to receive and detain such prisoners, deserters, and absentees without leave :

Part IV.  
s. 131.

(2.) Provided that where a person has been sentenced in India or in a colony to a term of imprisonment or detention exceeding twelve months, or to a term of penal servitude, he shall be transferred as soon as practicable to a prison or detention barrack or convict establishment within the United Kingdom, unless in the case of imprisonment or detention the court shall for special reasons otherwise order, there to undergo his sentence, or unless he belongs to a class with respect to which a Secretary of State has declared that, by reason of the climate or place of his birth or the place of his enlistment, or otherwise, it is not beneficial to the person to transfer him to the United Kingdom ; every such declaration shall be laid before both Houses of Parliament.

(3.) Any order which can be made under this section by the court may be made by the confirming authority in confirming the finding and sentence, and in the case of any commutation or remission of sentence, may be made by the authority commuting or remitting the sentence.

#### NOTE.

Under s. 60 an offender sentenced to penal servitude in India or a colony must be sent to a penal servitude prison as soon as practicable, to undergo his sentence, and under this section, that prison must be in the United Kingdom, unless he belongs to a class to which a declaration of the Secretary of State, made under this section, is applicable. An offender sentenced in India or a colony to imprisonment or detention must also, if the term of his sentence exceeds twelve months, be sent home to undergo his sentence, unless he belongs to such class as aforesaid, or unless the court which tried him, or the authority confirming or commuting or remitting the sentence, for special reasons otherwise order.

Under this section the Secretary of State made general regulations dated October, 1881, declaring it not to be beneficial to any of the following classes to be transferred to the United Kingdom when under sentence of penal servitude or imprisonment. These regulations now apply also to persons under sentences of detention : See A.O. 132 of 1907.

(1.) By reason of climate :—

- a. Asiatics and Africans.
- b. Other persons of colour.

(2.) By reason of place of birth :—

- c. Persons born out of the United Kingdom and domiciled in any place not in the United Kingdom.

(3.) By reason of place of enlistment :—

- d. Persons engaged for service in the Royal Malta Artillery, or in any Indian or colonial corps.

For definitions of India and colony see s. 190 (21), (23). For the purpose of the provisions of the Act relating to the execution of sentences of penal servitude, imprisonment, and detention, the Channel Islands and Isle of Man are deemed to be colonies : Section 187 (2).



## Part IV.

SS.

131-133.

Duty of  
governor of  
prison to  
receive  
prisoners,  
deserters,  
and  
absentees  
without  
leave.

132. (1.) The governor of every prison in the United Kingdom, and the governor of every prison in India or a colony who is under the same obligation as the governor of a prison in the United Kingdom, shall receive and confine, until discharged or delivered over in due course of law, all prisoners sent to such prison in pursuance of this Act, and every person delivered into his custody as a deserter or absentee without leave by any person conveying him under legal authority, on production of the warrant of a court of summary jurisdiction on which such deserter or absentee without leave has been taken or committed, or of some order from a Secretary of State, or from the Governor-General of India, or the Governor of a colony, which order shall continue in force until the deserter or absentee without leave has arrived at his destination.

(2.) Every such governor shall also receive into his custody for a period not exceeding seven days, any soldier in military custody upon delivery to him of a written order purporting to be signed by the commanding officer of such soldier.

(3.) The provisions of this section with respect to the governor of a prison in the United Kingdom shall apply to a person having charge of any police station or other place in which prisoners may legally be confined.

## NOTE.

Sub-section (1). *Same obligation.* See s. 131.

For definitions of India and colony, see s. 190 (21), (23), and as to the Channel Islands and Isle of Man, s. 187 (2).

Sub-section (2). The object of this is to provide for the safe keeping during a halt on the line of march of soldiers in military custody.

*Military Prisons and Detention Barracks.*

Establish-  
ment and  
regulation  
of military  
prisons.

133. (1.) It shall be lawful for a Secretary of State and in India for the Governor-General, to set apart any building or part of a building under the control of the Secretary of State or Governor-General as a military prison or detention barrack, or as a public prison for the imprisonment of military prisoners, and to declare that any such building or part of a building shall be a military prison or a detention barrack, or a public prison, as the case may be, and every military prison so declared shall be deemed to be a public prison within the meaning of the provisions of this Act relating to imprisonment, and if such prison is in India shall be deemed to be an authorised prison.

(2.) It shall be lawful for a Secretary of State, and in India for the Governor-General, from time to time to make, alter, and repeal rules for the government, management, and regulation of military prisons and detention barracks, and for the appointment and removal and powers of inspectors, visitors, governors, and officers thereof, and for the labour



of military or other prisoners and soldiers undergoing detention therein, and for enabling such prisoners or soldiers to earn, by special industry and good conduct, a remission of a portion of their sentence, and for the safe custody of such prisoners or soldiers, and for the maintenance of discipline among them, and for the punishment by personal correction, restraint, or otherwise of offences committed by such prisoners or soldiers, so, however, that such rules shall not authorise corporal punishment to be inflicted for any offence, nor render the imprisonment or detention more severe than it is under the law in force for the time being in any public prison in England subject to the Prison Act, 1877, and provided that all the regulations made under the Prison Act, 1898, as to the duties of gaolers and medical officers, and all regulations contained in the Coroners' Act, 1887, as to the duties of coroners with respect to inquests in prisons and detention barracks, shall be contained in such rules, so far as the same can be made applicable.

40 & 41 Vict.  
c. 21.

61 & 62 Vict.  
c. 41.

50 & 51 Vict.  
c. 71.

(3.) On all occasions of death by violence or attended with suspicious circumstances in any military prison or detention barrack in India an inquest is to be held, to make inquiry into the cause of death. The commanding officer shall cause notice to be given to the nearest magistrate, duly authorised to hold inquests, and such magistrate shall hold an inquest into the cause of any such death, in the manner and with the powers provided in the case of similar inquiries held under the law for the time being in force in India for regulating criminal procedure.

(4.) Where from any cause there is no competent civil authority available, the commanding officer shall convene a court of inquest. Such court shall be convened and shall hold the inquest in such manner as may be prescribed.

(5.) Such rules may apply to such prisons and detention barracks any enactments of the Prison Act, 1865, imposing punishments on any persons not prisoners.

28 & 29 Vict.  
c. 126.

(6.) All rules made by a Secretary of State in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if not, as soon as practicable after the commencement of the then next session of Parliament.

(7.) In any country in which operations against the enemy are being conducted, the powers of a Secretary of State under this section with respect to military prisons and detention barracks shall be exercisable by the officer commanding-in-chief in the field, and shall include a power of declaring any place to be a military prison or a detention barrack, and the limitations on the power of making rules as to the punishment of prisoners and soldiers undergoing detention, and as to the severity of imprisonment and detention shall not apply :

Part IV. Provided that nothing in this subsection, or in any rules made thereunder, shall authorize flogging or other corporal punishment to be inflicted for any offence.

## NOTE.

Sub-section (1). This section enables a Secretary of State to set apart any building as a military prison or as a detention barrack. The section gives a similar power to the Governor-General of India.

The section also gives power to a Secretary of State to set apart any part of a building under his control as a public prison for the imprisonment of military prisoners. Any part of a building so set apart as a public prison can be declared by the Secretary of State to be a public prison, and necessarily comes under the rules relating to other public prisons.

The powers under this sub-section in respect of prisons are in practice exercised by the Secretary of State for War, and for that purpose the Home Secretary places at the disposal of the War Office, more or less permanently, the whole or some portion of civil prisons.

As military prisoners sentenced to imprisonment are to undergo their sentences either in military custody or in a public prison (see ss. 63 (1) 64 (1), 65 (1)), this section provides that a building declared to be a military prison shall be a public prison, so as to allow such sentences to be undergone in a military prison. As a penal servitude prisoner while in military custody may be confined in an authorised prison (s. 62 (2)), this section declares a military prison in India to be an authorised prison, so as to allow any such military convict to be confined during his intermediate custody in a military prison.

Sub-section (2). The power to provide by the Rules under this sub-section for corporal punishment in military prisons was taken away by the Army (Annual) Act, 1906.

*Regulations made under the Prison Act, 1898, &c.* See Rules 87-113 and 157-175 of the Rules for Convict Prisons, 1899, and s. 3 of the Coroners' Act, 1887 (50 & 51 Vict. c. 71).

Sub-section (4). *Prescribed.* See Rule. 127.

The orders for the interior management of military prisons and detention barracks, &c., are laid down in the Rules for Military Prisons and Detention Barracks. See K.R., para. 645 *et seq.*

Restrictions on confinement in prisons in India or colonies, not being military.

134. No soldier shall be confined longer than is absolutely necessary in prisons other than military prisons in India, and the Colonies, where the rules for the government and management of such prisons differ from those made by the Governor-General of India and a Secretary of State in the case of India and the colonies respectively.

## NOTE.

See for definitions of India and colony s. 190 (21), (23), and as to the Channel Islands and Isle of Man see 187 (2).

Classification of prisoners.

135. Whereas it is expedient that a clear difference should be made between the treatment of prisoners convicted of breaches of discipline and the treatment of prisoners convicted of offences of an immoral, dishonest, shameful, or criminal character, or sentenced

to be discharged from the service with ignominy, a Secretary of State shall from time to time make rules for the classification and treatment of such prisoners.

—  
ss.  
135-137.

## NOTE.

See K.R., para. 607.

135A. [This section was repealed by s. 9 (2) of the Army (Annual) Act 1907.]

*Pay.*

136. The pay of an officer or soldier of His Majesty's regular forces shall be paid without any deduction other than the deductions authorised by this or any other Act or by any Royal Warrant for the time being, or by any law passed by the Governor-General of India in Council.

Authorised  
deductions  
only to be  
made from  
pay.

137. The following penal deductions may be made from the ordinary pay due to an officer of the regular forces :

Penal  
stoppages  
from  
ordinary  
pay of  
officers.

- (1.) All ordinary pay due to an officer who absents himself without leave, or overstays the period for which leave of absence has been granted him, unless a satisfactory explanation has been given through the commanding officer of such officer, and has been notified as satisfactory by the Commander-in-Chief to a Secretary of State ;
- (2.) The sum required to make good such compensation for any expenses, loss, damage, or destruction occasioned by the commission of any offence as may be awarded by the court-martial by whom he is convicted of such offence ;
- (3.) The sum required to make good the pay of any officer or soldier which he has unlawfully retained or unlawfully refused to pay ;
- (4.) The sum required to make good any loss, damage, or destruction of public property which, after due investigation, appears to the Secretary of State to have been occasioned by any wrongful act or negligence on the part of the officer.

## NOTE.

This section states the penal deductions that may be made from the ordinary pay of an officer, and by implication excludes other penal deductions, but it does not prohibit deductions not penal, as, for instance, in respect of rations ; see the preamble to the Pay Warrant as to stoppages from pay, &c., to meet public claims, or regimental debts or claims. Anything beyond ordinary pay, being in the nature of a gratuity or reward, is left entirely to the disposal of the Pay Warrant.

The provision contained in paragraph (4) allowing deductions to be made in respect of damage to public property caused wrongfully or negligently by an officer was introduced by the Army (Annual) Act, 1904.

Part IV. **138.** The following penal deductions may be made from the ordinary pay due to a soldier of the regular forces :

Penal stoppages from ordinary pay of soldiers.

- (1.) All ordinary pay for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of imprisonment awarded by a civil court or court-martial, or if he is on board one of His Majesty's ships, by the commanding officer of that ship, for every day of detention or field punishment awarded by a court-martial or by his commanding officer, and for every day whilst he is in custody on a charge for an offence of which he is afterwards convicted by a civil court or court-martial, or on a charge of absence without leave, for which he is afterwards awarded detention or field punishment by his commanding officer ;
- (2.) All ordinary pay for every day on which he is in hospital on account of sickness certified by the proper medical officer attending on him at the hospital to have been caused by an offence under this Act committed by him ;
- (3.) The sum required to make good such compensation for any expenses, loss, damage, or destruction occasioned by the commission of any offence as may be awarded by the court-martial by whom he is convicted of such offence, or if he is on board of one of His Majesty's ships, by the commanding officer of that ship, or where he has confessed the offence and his trial is dispensed with by order under section seventy-three of this Act, as may be awarded by that order or by any other order of a competent military authority under that section ;
- (4.) The sum required to make good such compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, or regimental necessaries or military decoration, or to any buildings or property, as may be awarded by his commanding officer, or, in case he requires to be tried by court-martial, by that court-martial, or if he is on board one of His Majesty's ships, by the commanding officer of that ship ;
- (5.) Where a soldier at the time of his enlistment belonged to any part of the auxiliary forces, the sum required to make good any compensation for which at the time of his enlistment he was under stoppage of pay as a member of the auxiliary forces, and any sum which he is liable to pay by reason of his quitting the said part of the auxiliary forces upon his enlistment ;
- (6.) Where a soldier's liquor ration is stopped by his commanding officer on board any ship, whether commissioned by His

Majesty or not, the sum equivalent to such ration, Part IV.  
 whether previously drawn by the soldier or not, not  
 exceeding one penny a day for twenty-eight days ; s. 138.

- 7.) The sum required to pay a fine awarded by a court-martial, his commanding officer, or a civil court ; and
- 8.) The sum required to pay any sum ordered by a Secretary of State, or any officer deputed by him for the purpose, to be paid as mentioned in this Act for the maintenance of his wife or child, or of any bastard child, or towards the cost of any relief given by way of loan to his wife or child ;

Provided that—

- (a.) The total amount of deductions from the ordinary pay due to a soldier in respect of the sums required to pay any compensation, fine, or sum awarded or ordered to be paid as aforesaid, shall not exceed such sum as will leave to the soldier, after paying for his messing and washing, less than one penny a day ; and
- (b.) a person shall not be subjected in respect of any compensation, fine, or sum awarded or ordered to be paid as aforesaid, to any deductions greater than is sufficient to make good the expenses, loss, damage, or destruction for which such compensation is awarded, or to pay the said sum ; and
- (c.) where a soldier who is sentenced or ordered in respect of an offence on active service to forfeit all ordinary pay is liable to any other penal deductions from pay, the sentence or order shall apply only to so much of his ordinary pay as remains after those other deductions have been made.

#### NOTE.

The first paragraph of the note to s. 137 applies to this section also.

Paragraph (1). The Pay Warrant provides that in all the cases, except one, mentioned in this paragraph pay is to be forfeited, and no discretion is given to the commanding officer whether or not to enforce wholly or partially the forfeiture. Absence as a prisoner of war, however, does not cause a forfeiture of pay, unless a Court of Inquiry decide that the soldier was taken prisoner through neglect or misconduct on his own part ; and at most only the balance of pay unissued at the date of rejoining is forfeited. See Pay Warrant, 1907, arts. 902-910.

Under s. 140 (2) and the Pay Warrant, absence for less than six hours cannot reckon as a day of absence, unless two conditions are fulfilled, first, that it prevented the absentee from fulfilling a military duty, and second, that the duty was thrown upon some other person. The six hours should be reckoned consecutively, but it is immaterial whether they are partly in one day and partly in another. Thus, a soldier forfeits one day's pay for any period of six hours' continuous absence without leave, and where the absence extends over twelve hours he forfeits one day's pay in respect of any day reckoned from midnight to midnight during any portion of which he was absent. He forfeits a day's pay for any day in which, by reason of his absence,



Part IV. however short, a duty that ought to be performed by him is thrown upon some other person.

**s. 138.**

For example, if a soldier is absent from 9 P.M. on Monday until 4 A.M. on Tuesday, his absence counts as a day's absence, but no more, although the absence was partly on one day and partly on another. If, however, he had returned at 1 A.M., his absence could not count as a day's absence, unless meanwhile he was bound to go on guard or perform some other military duty, and in consequence of his absence some other soldier had to go on guard, or perform that duty.

If a soldier is absent from 6 P.M. on Monday until 6.5 A.M. on Tuesday, his absence is to be reckoned as two days' absence, and it is also to be so reckoned if he returns at 4 A.M. on Tuesday, and at 2 A.M. some other soldier had to go on guard instead of him.

The competent military authority, under s. 73 (1), can order that the soldier shall forfeit his pay for every day in custody on a charge of desertion or fraudulent enlistment when he confesses his guilt and his trial is dispensed with.

Under s. 140 (2), the imprisonment or detention cannot count as a day of imprisonment or detention unless it has lasted at least six hours.

Paragraph (2). This deduction is only authorised where the sickness is caused by an offence of which a soldier has been found guilty and therefore does not extend to sickness caused by immorality or intemperance, when there is no conviction (either by a court-martial or under the award of a commanding officer) for an offence by which the sickness was caused. The medical officer must attend the investigation of the offence, whether before the court-martial or the commanding officer, and give evidence in substantiation of the facts contained in his certificate. The certificate alone is not sufficient. See K.R., para. 504, 505. The Pay Warrant provides that where the deduction is authorised under this paragraph the pay is in every case to be forfeited.

Paragraph (3). As to the statement of the ground for compensation in the charge, see Rule 11 (F) and note, and App. I, Note as to the use of Forms of Charges (23), p. 532, below.

Under paragraphs (3) and (4) a soldier is not liable for the ordinary expenses of his prosecution, capture, or conveyance, or indirect losses of a similar kind. Nor would a soldier be liable under them for damage to a military policeman's clothes, because the policeman fell down and damaged them while in pursuit of the soldier when endeavouring to escape. But where a soldier refused to march, being able to do so, and a cab had to be hired for his conveyance, he was held liable for the expense thus incurred by his contumacy.

*Dispensed with by order.* As this is limited to an order under s. 73, a commanding officer who of his own authority abstains from sending an accused soldier for trial must dismiss the charge (see s. 46 (1), Rule 4 (A) and note), and therefore cannot in the technical sense exercise any power under this paragraph of ordering any deduction from the soldier's pay.

Paragraph (4). *Buildings or property.* These words are not confined to public buildings, and consequently a soldier may be ordered to pay damages for broken windows or other slight damage done by him. A serious case of this sort is necessarily a case which should not be disposed of by a commanding officer.

Where a soldier has been convicted by court-martial for an offence, his commanding officer cannot subsequently award compensation for damage caused through that offence.

*Requires to be tried by court-martial.* See s. 46 (8).

Paragraph (7). This paragraph will enable an officer to pay a fine imposed



on a soldier by a civil court, and deduct it from his pay, and thus prevent the soldier from being imprisoned for non-payment of the fine. A court-martial or a commanding officer cannot award a fine except for drunkenness. See s. 44 *n.* and note.

Paragraph (8). See s. 145, under which the Secretary of State, or the officer deputed by him for the purpose, can order this deduction, either of his own motion or in accordance with the order of the court.

Proviso (a). If a soldier is subjected to a deduction in respect of one matter up to the full amount allowed by this proviso, any deduction subsequently imposed cannot begin to be enforced till the whole sum in respect of which the first deduction was imposed is satisfied. If a soldier under deductions not up to the full amount allowed by this proviso is subjected to a further deduction or deductions, which taken altogether would exceed that amount, the latter deductions must abate in order of priority, so that in no case may the soldier have less than the penny a day.

Proviso (b). The court will necessarily take care to find as accurately as possible the amount for which deductions are to be made from a soldier's pay, but as in some cases they will be unable to ascertain the amount accurately, and in others may be mistaken, care will have to be taken in enforcing their sentence not to contravene this proviso. The sentence of the court will not justify any deduction which exceeds the actual loss.

If a soldier is sentenced to stoppages for losing by neglect articles of his clothing or equipments, and these articles are afterwards found and in serviceable condition, he has "made good" the loss. Where two soldiers were convicted of having jointly injured public property, each was held to be rightly sentenced to make good the whole amount of the injury sustained; and in the event of one soldier dying, or otherwise ceasing to be amenable to the award, the whole amount might be legally levied upon the other. Where, however, both remained amenable, the stoppages would be properly divided between them in equal proportions.

The principle is, that stoppages are intended, not for punishment, but to compensate for loss sustained.

Proviso (c). As to the power to order forfeiture of pay for offences committed on active service, see s. 44 (6) and s. 46 (2) (d). The effect of the proviso is that any forfeiture ordered under those provisions will only take effect on the balance of the soldier's pay which remains after providing for any other penal deductions to which he may be liable at the time.

139. Any deduction of pay authorised by this Act may be remitted in such manner and by such authority as may be from time to time provided by Royal Warrant, and subject to the provisions of any such warrant may be remitted by the Secretary of State.

How deduction of pay may be remitted.

140. (1.) Any sum authorised by this Act to be deducted from the ordinary pay of an officer or soldier may, without prejudice to any other mode of recovering the same, be deducted from the ordinary pay or from any sums due to such officer or soldier in such manner, and when deducted or recovered may be appropriated in such manner, as may be from time to time directed by any regulation or order of the Secretary of State.

Supplemental as to deductions from ordinary pay

(2.) And any such regulation or order may from time to time declare what shall be deemed for the purposes of the

**Part IV.** provisions of this Act relating to deductions from pay to constitute a day of absence or a day of imprisonment or detention, so, however, that no time shall be so reckoned as a day unless the absence or imprisonment or detention has lasted for six hours or upwards, whether wholly in one day or partly in one day and partly in another, or unless such absence prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person.

**ss.**  
**140-142.**

(3.) In cases of doubt as to the proper issue of pay or the proper deduction from pay due to any officer or soldier, the pay may be withheld until His Majesty's order respecting it has been signified through a Secretary of State, which order shall be final.

#### NOTE.

Sub-section (1). *Sums due.* This will allow the amount to be deducted from prize-money or other sums earned but not paid to an officer or soldier. It would include good conduct pay or deferred pay, but not money lodged in the regimental savings' bank.

Sub-section (2). *Day of absence.* See Pay Warrant, and note to s. 138 (1).

Prohibition  
of assign-  
ment of  
military  
pay, pen-  
sions, &c.

**141.** Every assignment of, and every charge on, and every agreement to assign or charge, any deferred pay, or military reward payable to any officer or soldier of any of His Majesty's forces, or any pension, allowance, or relief payable to any such officer or soldier, or his widow, child, or other relative, or to any person in respect of any military service, shall, except so far as the same is made in pursuance of a Royal Warrant for the benefit of the family of the person entitled thereto, or as may be authorised by any Act for the time being in force, be void.

#### NOTE.

The assignment of pay by an officer or soldier is void by law independently of this enactment. A pension or retiring allowance, on the other hand, would but for this enactment be assignable. See *Lucas v. Harris*, 18 Q.B.D. 127; *Croice v. Price*, 22 Q.B.D. 429.

*Authorised by any Act.* This refers to 2 & 3 Vict. c. 51, authorising the assignment, in certain cases, of a pension to guardians of the poor giving relief to the pensioner or his family.

Punish-  
ment of  
false oath  
and per-  
sonation.

**142. (1.)** Where any regulations made by the Secretary of State or the Commissioners of His Majesty's Treasury, with respect to the payment of any military reward, pension, or allowance, or any sum payable in respect of military service, or with respect to the payment of money or delivery of property in the possession of the military authorities, provide for proving, whether on oath or by statutory declaration, the identity of the recipient or any other matter in connection with such payment, such oath may be administered and declaration taken by the persons specified in the regulations, and any person who in such oath or declaration wilfully makes any false statement shall be liable to the punishment of perjury.

**(2.)** Any person who falsely represents himself to any military

naval, or civil authority to belong to or to be a particular man in the regular, reserve, or auxiliary forces shall be deemed to be guilty of personation. Part IV.  
ss.  
142-143.

(3.) Any person who is guilty of an offence under the False Personation Act, 1874, in relation to any military pay, reward, pension, or allowance, or to any sum payable in respect of military service, or to any money or property in the possession of the military authorities, or is guilty of personation under this section, shall be liable, on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding twenty-five pounds. 37 & 38 Vict.  
c. 36.

(4.) Provided that nothing in this section shall prevent any person from being proceeded against and punished under any other enactment or at common law in respect of any offence, so that he be not punished twice for the same offence.

#### NOTE.

If a man personates another with intent to obtain any money or property he is guilty of an offence under the False Personation Act, 1874, and, if convicted at the assizes, is liable to penal servitude for life (see Ch. VII., para. 75). In a very serious case a man might be indicted under that Act; in trivial cases it will be better to prosecute under the present section.

Persons guilty of obtaining pay or pensions by fraudulent means can also be proceeded against, either by indictment or summarily, under the Pension and Yeomanry Pay Act, 1884 (47 & 48 Vict. c. 55), s. 3.

Under this section a man who falsely represents himself to any authority to belong to part of His Majesty's forces, or to be a particular man in any of His Majesty's forces, may be punished, although he does not do it with intent to obtain any money. But it will not be desirable to institute a prosecution in such cases, unless the man has, in fact, obtained some advantage, or has put the authorities to expense and inconvenience. Care must be taken not to prosecute a man for what may be mere idle talk or bravado, without any guilty intention.

In this, as in every other case of an offence punishable by a court of summary jurisdiction, a person who aids and abets the offence is, in England, equally punishable with the principal offender. Consequently, if A personates B, a reserve man, and thereby obtains B's pay, and hands the pay over to B or B's wife, B or B's wife is punishable as aiding and abetting the offence of personation by A.

An army reserve man who commits any offence under sub-sections (2) or (3) in the presence of an officer may, at the discretion of the officer, be ordered into either military or civil custody; and in the latter case will be tried before a court of summary jurisdiction: Reserve Forces Act, s. 6 (3).

#### *Exemptions of Officers and Soldiers.*

143. (1.) All officers and soldiers of His Majesty's regular forces on duty or on the march; and  
Their horses and baggage; and  
All prisoners under military escort; and

Exemptions  
of officers  
and soldiers  
from tolls.

Part IV. All carriages and horses belonging to His Majesty or employed  
 ss. in his military service, when conveying any such persons  
 143-144. as above in this section mentioned, or baggage or stores,  
 or returning from conveying the same,

shall be exempted from payment of any duties or tolls on embarking or disembarking from or upon any pier, wharf, quay, or landing-place, or in passing along or over any turnpike or other road or bridge, otherwise demandable by virtue of any Act of Parliament already passed or hereafter to be passed, or by virtue of any Act, Ordinance, order or direction of the legislature or other authority in India or any colony :

Provided that nothing in this section shall exempt any boats, barges, or other vessels employed in conveying the said persons, horses, baggage, or stores along any canal from payment of tolls in like manner as other boats, barges, and vessels.

(2.) When any soldiers have occasion in their march by route to pass regular ferries in Scotland, the officer commanding may, at his option, pass over with his soldiers as passengers and shall pay for himself and each soldier one-half only of the ordinary rate payable by single persons, or may hire the ferry boat for himself and his party, debarring others for that time, and shall in all such cases pay only half the ordinary rate for such boat.

(3.) Any person who demands and receives any duty toll, or rate in contravention of this section shall, on summary conviction, be liable to a fine not exceeding five pounds nor less than ten shillings.

#### NOTE.

Sub-section (1). *Regular forces.* This expression includes the Marines and His Majesty's Indian forces, also the reserve forces when subject to military law: s. 190 (8).

The exemption is not a personal one, but is confined to officers and soldiers when on duty or on the march; thus an officer driving from his private house to barracks would not be entitled to the exemption.

For definition of India and colony, see s. 190 (21), (23).

Sub-section (3). *On summary conviction*, see ss. 166-169.

Exemptions  
of soldiers  
in respect  
of civil  
process.

144. (1.) A soldier of His Majesty's regular forces shall not be liable to be taken out of His Majesty's service by any process, execution, or order of any court of law or otherwise, or to be compelled to appear in person before any court of law, except in respect of the following matters, or one of them; that is to say,

(a.) On account of a charge of or conviction for crime; or

(b.) On account of any debt, damages, or sum of money, when the amount exceeds thirty pounds over and above all costs of suit.

(2.) For the purposes of this section a crime shall mean a felony, misdemeanour, or other crime or offence punishable, according to

the law in force in that part of His Majesty's dominions in which such soldier is, with fine or imprisonment or some greater punishment, and shall not include the offence of a person absenting himself from his service, or neglecting to fulfil his contract, or otherwise misconducting himself respecting his contract.

(3.) For the purposes of this section a court of law shall be deemed to include a court of summary jurisdiction and any magistrate.

(4.) The amount of the debt, damages, or sum shall be proved for the purpose of any process issued before the court has adjudicated on the case by an affidavit of the person seeking to recover the same or of some one on his behalf, and such affidavit shall be sworn, without payment of any fee, in the manner in which affidavits are sworn in the court in which proceedings are taken for the recovery of the sum, and a memorandum of such affidavit shall, without fee, be endorsed upon any process or order issued against a soldier.

(5.) All proceedings and documents in or incidental to a process, execution, or order in contravention of this section shall be void; and where complaint is made by a soldier or his commanding officer that such soldier is dealt with in contravention of this section by any process, execution, or order issued out of any court, and is made to that court or to any court superior to it, the court, or some judge thereof, shall examine into the complaint, and shall, if necessary, discharge such soldier without fee, and may award reasonable cost to the complainant, which may be recovered as if costs had been awarded in his favour in any action or other proceeding in such court.

Provided that—

- (1.) Any person having cause of action or suit against a soldier of the regular forces may, notwithstanding anything in this section, after due notice in writing given to the soldier, or left at his last quarters, proceed in such action or suit to judgment, and have execution other than against the person, pay, arms, ammunition, equipments, regimental necessities, or clothing, of such soldier; and
- (2.) This section shall not prevent such proceeding with respect to apprentices and indentured labourers as is authorised by this Act.

#### NOTE.

The history of this section is given in Clode, *Mil. Forc.*, i 208. It exempts a soldier from appearing in person, though not from being sued, in case of a debt under £30.

As to apprentices and indentured labourers, see ss. 96, 97.

The exemption conferred by this section does not, of course, apply to a soldier required to attend as a witness before a court of law.



## Part IV.

s. 145.  
Liability of  
soldier to  
maintain  
wife and  
children.

145. (1.) A soldier of the regular forces shall be liable to contribute to the maintenance of his wife and of his children, and also to the maintenance of any bastard child of which he may be proved to be the father, to the same extent as if he were not a soldier; but execution in respect of any such liability or of any order or decree in respect of such maintenance shall not issue against his person, pay, arms, ammunition, equipments, instruments, regimental necessities, or clothing, nor shall he be liable to be punished for the offence of deserting or neglecting to maintain his wife or family, or any member thereof, or of leaving her or them chargeable to any union, parish, or place.

(2.) When any order or decree is made under any Act or at common law for payment by a man who is or subsequently becomes a soldier of the regular forces either of the cost of the maintenance of his wife or child, or of any bastard child of whom he is the putative father, or of the cost of any relief given to his wife or child by way of loan, a copy of such order or decree shall be sent to a Secretary of State, or any officer deputed by him for the purpose, and in the case—

(a.) Of such order or decree being so sent; or

(b.) Of it appearing to the satisfaction of a Secretary of State, or any officer deputed by him for the purpose, that a soldier of the regular forces has deserted or left in destitute circumstances, without reasonable cause, his wife or any of his legitimate children under fourteen years of age,

Secretary of State, or officer, shall order a portion not exceeding in respect of a wife or children one shilling, and in respect of a bastard child sixpence of the daily pay of a non-commissioned officer who is not below the rank of serjeant, and not exceeding in respect of a wife or children sixpence, and in respect of a bastard child threepence, of the daily pay of any other soldier, to be deducted from such daily pay, and to be appropriated in liquidation of the sum adjudged to be paid by such order or decree, or towards the maintenance of such wife or children, as the case may be, in such manner as the Secretary of State, or officer, thinks fit.

(3.) Where a proceeding is instituted against a soldier of the regular forces under any Act, or at common law, for the purpose of enforcing against him any such liability as above in this section mentioned, and such soldier is quartered out of the jurisdiction of the court, or, if the proceeding is before a court of summary jurisdiction, out of the petty sessional division in which the proceeding is instituted, the process shall be served on the commanding officer of such soldier, and such service shall not be valid unless there be left therewith, in the hands of the commanding officer, a sum of money (to be adjudged as costs incurred in obtaining the order or decree, if made against the soldier) sufficient to enable him



to attend the hearing of the case and return to his quarters, and such sum may be expended by the commanding officer for that purpose; and no process whatever under any Act or at common law in any proceeding in this section mentioned shall be valid against a soldier of the regular forces if served after such soldier is under orders for service beyond the seas.

Part IV,  
—  
ss.  
145-152.

NOTE.

The King's Regulations, para. 390 (vii), provide for handing over to the parish authority in certain cases a married soldier who on attestation falsely represented himself to be single.

Sub-section (2). The deputy for the purpose of this sub-section is at home, the General Officer Commanding-in-Chief a command, and the Major-General or Brigadier-General in charge of administration, and also the General Officer Commanding the London district, Jersey and Guernsey; in India the General Officer Commanding a command, division or brigade; the General Officers Commanding the Infantry Brigades, and the General Officers Commanding the Royal Artillery, at Gibraltar and Malta; and in the Colonies the General Officer Commanding in each case.

Under the amendments introduced into this sub-section by the Army (Annual) Act, 1904, the amounts which can be compulsorily stopped from the pay of a serjeant or soldier for the maintenance of a wife or legitimate children are now double the amounts which can be stopped in the case of a bastard child.

Sub-section (3). *Court of summary jurisdiction.* See definition in s. 190(35).

146. An officer of the regular forces on the active list within the meaning of any Royal Warrant for regulating the pay and promotion of the regular forces shall not be capable of being nominated or elected to be sheriff of any county, borough, or other place, or to be mayor or alderman of, or to hold any office in, any municipal corporation in any city, borough, or place in the United Kingdom.

Officers not  
to be  
sheriffs or  
mayors.

Provided that nothing in this section shall disqualify any officer for being elected to or being a member of a county council.

NOTE.

It is generally understood that officers on full pay and soldiers are exempt from serving all offices which require the personal discharge of duty, and do not admit of the appointment of a deputy. See ch. XII, para. 8.

147. Every soldier in His Majesty's regular forces shall be exempt from serving on any jury.

Exemption  
from jury.

NOTE.

See Ch. XII, para. 8.

*Court of Requests in India.*

148-151. [These sections, relating to the above subject, were repealed by s. 6 of the Army (Annual) Act, 1888, and s. 5 of the Army (Annual) Act, 1895.]

*Legal Penalties in Matters respecting Forces.*

152. Any person who falsely represents himself to any military, naval, or civil authority to be a deserter from His Majesty's regular forces, shall on summary conviction be sentenced to be

Punish-  
ment for  
pretending  
to be a  
deserter.

Part IV. imprisoned, with or without hard labour, for any period not exceeding three months.

ss.

152-154.

NOTE.

*His Majesty's regular forces.* See definition in s. 190 (8).

*On summary conviction.* See ss. 166-168.

Punish-  
ment for  
inducing  
soldiers to  
desert.

153. Any person who in the United Kingdom or elsewhere by any means whatsoever—

- (1.) Procures or persuades any soldier to desert, or attempts to procure or persuade any soldier to desert; or
- (2.) Knowing that a soldier is about to desert, aids or assists him in deserting; or
- (3.) Knowing any soldier to be a deserter, conceals such soldier, or aids or assists him in concealing himself, or aids or assists in his rescue,

shall be liable on summary conviction to be imprisoned, with or without hard labour, for a term not exceeding six months.

NOTE.

(1) If this offence is committed by a person subject to military law, it can be dealt with under s. 12.

*On summary conviction.* See ss. 166-168.

Apprehen-  
sion of  
deserters.

154. With respect to deserters the following provisions shall have effect:

- (1.) Upon reasonable suspicion that a person is a deserter, it shall be lawful for any constable, or if no constable can be immediately met with, then for any officer or soldier or other person, to apprehend such suspected person, and forthwith to bring him before a court of summary jurisdiction:
- (2.) A justice of the peace, magistrate, or other person having authority to issue a warrant for the apprehension of a person charged with crime may, if satisfied by evidence on oath that a deserter is or is reasonably suspected to be within his jurisdiction, issue a warrant authorising such deserter to be apprehended and brought forthwith before a court of summary jurisdiction:
- (3.) Where a person is brought before a court of summary jurisdiction charged with being a deserter under this Act, such court may deal with the case in like manner as if such person were brought before the court charged with an indictable offence, or in Scotland an offence:
- (4.) The court, if satisfied either by evidence on oath or by the confession of such person that he is a deserter shall forthwith, as it may seem to the court most expedient with regard to his safe custody, cause him either to be delivered into military custody, in such manner as the court may deem most expedient, or, until he can be so delivered, to

be committed to some prison, police station, or other place legally provided for the confinement of persons in custody, for such reasonable time as appears to the court reasonably necessary for the purpose of delivering him into military custody :

- (5.) Where the person confessed himself to be a deserter, and evidence of the truth or falsehood of such confession is not then forthcoming, the court shall remand such person for the purpose of obtaining information as to the truth or falsehood of the said confession, and for that purpose the court shall transmit, if sitting in the United Kingdom, to a Secretary of State, or as he may direct, and if in India to the general or other officer commanding the forces in the military district or station where the court sits, and if in a colony to the general or other officer commanding the forces in that colony, a return (in this Act referred to as a descriptive return) containing such particulars and being in such form as is specified in the Fourth Schedule to this Act, or as may be from time to time directed by a Secretary of State :
- (6.) The court may from time to time remand the said person for a period not exceeding eight days in each instance, and not exceeding in the whole such period as appears to the court reasonably necessary for the purpose of obtaining the said information :
- (7.) Where the court causes a person either to be delivered into military custody or to be committed as a deserter, the court shall send, if in the United Kingdom to a Secretary of State, or as he may direct, and if in India or a colony to the general or other officer commanding as aforesaid a descriptive return in relation to such deserter, for which the clerk of the court shall be entitled to a fee of two shillings :
- (8.) A Secretary of State shall direct payment of the said fee.

#### NOTE.

This section provides for the apprehension of suspected deserters by the civil power and for the delivery of deserters into military custody. It will be observed that a court of summary jurisdiction—that is the justices or police magistrates, or in Scotland the sheriff, s. 190 (35)—must be satisfied by evidence on oath or by the confession of the person apprehended, that he is a deserter before delivering him to the military authorities.

There is no obligation on the military authority to take over a man committed as a deserter, and in certain circumstances it is their duty not to do so. See K.R., paras. 517–540.

Sub-sections (5) and (7). *Or as he may direct.* These words were added by the Army (Annual) Act, 1898, for the purpose of enabling the Secretary of State to delegate his duties under the section.

For definition of India and colony, see s. 190 (21), (23).

## Part IV.

ss.

155-156.  
Penalty on  
trafficking  
in commis-  
sions.  
34 & 35  
Vict. c. 86.

155. Every person (except the Army Purchase Commissioners, and persons acting under their authority by virtue of the Regulation of the Forces Act, 1871) who negotiates, acts as agent for, or otherwise aids or connives at—

- (1.) The sale or purchase of any commission in His Majesty's regular forces ; or
- (2.) The giving or receiving of any valuable consideration in respect of any promotion in or retirement from such forces, or any employment therein ; or
- (3.) Any exchange which is made in manner not authorised by regulations made in pursuance of the Regimental Exchanges Act, 1875, and in respect of which any sum of money or other consideration is given or received,

shall be liable on conviction on indictment or information to a fine of one hundred pounds, or to imprisonment for any period not exceeding six months, and if an officer, on conviction by court-martial, to be dismissed the service.

Penalty on  
purchasing  
from  
soldiers  
regimental  
necessaries,  
equip-  
ments,  
stores, &c.

156. (1.) Every person who—

- (a.) Buys, exchanges, takes in pawn, detains, or receives from a soldier, or any person acting on his behalf, on any pretence whatsoever ; or
- (b.) Solicits or entices any soldier to sell, exchange, pawn, or give away ; or
- (c.) Assists or acts for a soldier in selling, exchanging, pawning, or making away with,

any of the property following ; namely, any arms, ammunition, equipments, instruments, regimental necessaries, or clothing, or any military decorations of an officer or soldier, or any furniture, bedding, blankets, sheets, utensils, and stores in regimental charge, or any provisions or forage issued for the use of an officer or soldier or his horse, or of any horse employed in His Majesty's service, shall, unless he proves either that he acted in ignorance of the same being such property as aforesaid, or of the person with whom he dealt being or acting for a soldier, or that the same was sold by order of a Secretary of State or some competent military authority, be liable on summary conviction, in the case of the first offence, to a fine not exceeding twenty pounds, together with treble the value of any property of which such offender has become possessed by means of his offence ; and in the case of a second offence, to a fine not less than five pounds and not exceeding twenty pounds, together with treble the value of any property of which such offender has become possessed by means of his offence, or to imprisonment, with or without hard labour, for a term not exceeding six months.

(2.) Where any such property as above in this section mentioned is found in the possession or keeping of any person, such person may be taken or summoned before a court of summary jurisdiction,

and if such court have reasonable ground to believe that the property so found was stolen, or was bought, exchanged, taken in pawn, obtained or received in contravention of this section, then if such person does not satisfy the court that he came by the property so found lawfully and without any contravention of this Act, he shall be liable on summary conviction to a penalty not exceeding five pounds. Part IV.  
s. 156.

(3.) A person charged with an offence against this section, and the wife or husband of such person, may, if he or she think fit, be sworn and examined as an ordinary witness in the case.

(4.) A person found committing an offence against this section may be apprehended without warrant, and taken, together with the property which is the subject of the offence, before a court of summary jurisdiction; and any person to whom any such property as above mentioned is offered to be sold, pawned, or delivered, who has reasonable cause to suppose that the same is offered in contravention of this section, may, and if he has the power shall, apprehend the person offering such property, and forthwith take him, together with such property, before a court of summary jurisdiction.

(5.) A court of summary jurisdiction, if satisfied on oath that there is reasonable cause to suspect that any person has in his possession, or on his premises, any property on or with respect to which any offence in this section mentioned has been committed, may grant a warrant to search for such property, as in the case of stolen goods: and any property found on such search shall be seized by the officer charged with the execution of such warrant, who shall bring the person in whose possession the same is found before some court of summary jurisdiction, to be dealt with according to law.

(6.) For the purposes of this section property shall be deemed to be in the possession or keeping of a person if he knowingly has it in the actual possession or keeping of any other person, or in an house, building, lodging, apartment, field, or place, open or inclosed, whether occupied by himself or not, and whether the same is so had for his own use or benefit, or for the use or benefit of another.

(7.) Articles which are public stores within the meaning of the Public Stores Act, 1875, and are not included in the foregoing description, shall not be deemed to be stores issued as regimental necessities or otherwise within the meaning of section thirteen of that Act. 38 & 39 Vict.  
c. 25.

(8.) It shall be lawful for the Governor-General of India or for the legislature of any colony, on the recommendation of the Governor thereof, but not otherwise, by any law or ordinance to reduce a minimum fine under this section to such amount as may to such Governor-General or legislature appear to be better adapted to the pecuniary means of the inhabitants.



Part IV. (9.) Every person who receives, detains, or has in his possession  
 ss. the identity certificate or life certificate of a person entitled to a  
 15e-157. military pension or to reserve pay or to any bounty as a pledge or  
 security for a debt, or with a view to obtain payment from the  
 pensioner or person entitled to the pay or bounty of a debt due  
 either to himself or to any other person, shall be liable on summary  
 conviction to the like penalty as for an offence under sub-section  
 one of this section, and the certificate shall be deemed to be  
 property within the meaning of this section.

NOTE.

This section applies to natives of India and to the arms, &c., of Indian  
 soldiers.

Sub-section (2). It was held in *Laws v. Read*, 63 L.J. Q.B. 683, that  
 the arrest, without warrant, of a person found in possession of stores was  
 lawful, even though the person was charged and convicted of purchasing the  
 stores from a soldier under sub-section (1), and that an action for false  
 imprisonment in such a case would not lie.

Sub-section (3). This sub-section is virtually repealed by the Criminal  
 Evidence Act, 1898, which enables persons charged with offences, and the  
 wives or husbands of such persons, to give evidence subject to certain  
 conditions, and supersedes all existing enactments authorising such persons to  
 give evidence. See Rule 80, and note.

For definition of India, colony, court of summary jurisdiction, and horse,  
 see s. 190 (21), (23), (35), (40).

Sub-section (9). This sub-section, as amended by the Army (Annual)  
 Act, 1904, now applies to any long training bounty certificates which may  
 be held by militiamen or yeomen. (See Army Order 115 of 1901.)

*Jurisdiction.*

Person not  
 to be tried  
 twice.

157. Where a person subject to military law has been acquitted  
 or convicted of an offence by a court-martial, he shall not be liable  
 to be tried again by a court-martial in respect of that offence.

NOTE.

Where a court is illegally constituted—as, for example, if convened by an  
 officer not authorised to convene it, or if composed of too few members—it  
 is no court at all, and therefore the accused will not really have been  
 tried, and may be tried again.

So also, a finding of conviction if not confirmed is of no validity (s. 54 (6)),  
 and the accused therefore in such a case has not been convicted, and can be  
 tried again. See ch. V, para. 5.

The principle of law is that a man shall not be tried twice in respect of  
 the same offence. It has been laid down that the test question is—Would  
 the evidence produced on the second trial have sufficed to support a con-  
 viction on the first. If so, the second trial is illegal and void.

Where a man is retried on the same charges, it is not usual to impose a  
 more severe punishment than that awarded on the first trial, and a confirming  
 officer should exercise his power of remission when confirming the proceedings,  
 if a greater punishment has been awarded on the second trial.

Where on the second trial the charge is for a different offence or the  
 particulars refer to a different set of facts, the second trial is valid, but an  
 offence of which under s. 56 the man could have been convicted on the first  
 trial is not a different offence.



158. (1.) Where an offence under this Act has been committed by any person while subject to military law, such person may be taken into and kept in military custody, and tried and punished for such offence, although he, or the corps or battalion to which he belongs, has ceased to be subject to military law, in like manner as he might have been taken into and kept in military custody, tried or punished, if he or such corps or battalion had continued so subject :

Part IV  
s. 158  
Liability to  
military  
law in  
respect of  
status.

Provided that where a person has since the commission of an offence ceased to be subject to military law, he shall not be tried for such offence, except in the case of the offence of mutiny, desertion, or fraudulent enlistment unless his trial commences within three months after he has ceased to be subject to military law ; but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court as well as by court-martial.

(2.) Where a person subject to military law is sentenced by court-martial to penal servitude, imprisonment, or detention, this Act shall apply to him during the term of his sentence, notwithstanding that he is discharged or dismissed from His Majesty's service, or has otherwise ceased to be subject to military law, and he may be kept, removed, imprisoned, made to undergo detention, and punished accordingly as if he continued to be subject to military law.

#### NOTE.

This section arises out of the difference between the status of a soldier and the status of a civilian. A soldier, using the term in its larger sense, repeatedly changes his status from soldier to civilian and from civilian to soldier. In the regular forces this change takes place when a soldier is transferred to the reserve, when he comes back from the reserve to the army on being called out for permanent service or for training, and again when he returns to civil life on being released from service or at the end of his training. A militiaman, as a general rule, is for a short time only in every year under military law, and returns again to his civil status in the same year. The volunteers, again, are constantly changing their status, as they are subject to military law when they are acting with the regular forces, and are not subject to that law under other circumstances, except when on actual service.

This section then provides that if a person while subject to military law commits a military offence, he may be punished for that offence, though he may have changed his status before he is tried, but he can be tried only within three months after the military status ceases. An exception is made with respect to mutiny, desertion, and fraudulent enlistment, as these offences may be tried at any time after they have been committed, subject to the restrictions in s. 161. Further exemptions are made by the Reserve Forces Act, 1882, s. 26 (2), and the Militia Act, 1882, s. 43 (2).

The section further enacts that a sentence for a military offence shall not be affected by the offender being discharged or dismissed, or otherwise ceasing to be subject to military law.

*An offence has been committed.* This includes the case of where an offence has been alleged to have been committed. (See *Marks v. Frogley*, L.R. [1898] 1 Q.B. 888.)

Part IV. It has been ruled by a Judge Advocate-General that a militiaman  
 — sentenced by his commanding officer to imprisonment during his period of  
 ss. training, can be kept in prison for the whole term of his sentence, although  
 158-161. the period of training expires before the expiration of the sentence.

Liability to  
 military  
 law in  
 respect of  
 place of  
 commission  
 of offence.

159. Any person subject to military law who within or without His Majesty's dominions commits any offence for which he is liable to be tried by court-martial, may be tried and punished for such offence at any place (either within or without His Majesty's dominions) which is within the jurisdiction of an officer authorised to convene general courts-martial, and in which the offender may for the time being be, in the same manner as if the offence had been committed where the trial by court-martial takes place, and the offender were under the command of the officer convening such court-martial.

NOTE.

This section provides that an offender may be tried by court-martial anywhere, so long as he is tried within the jurisdiction of an officer authorised to convene general courts-martial.

Punish-  
 ment not  
 increased  
 by trial  
 elsewhere  
 than offence  
 committed.

160. No person shall be subject to any punishment or penalties under the provisions of this Act other than those which could have been inflicted if he had been tried in the place where the offence was committed.

NOTE.

This enactment seems useless, as any difference in punishment under the Act is not dependent on the place of trial.

Liability to  
 military  
 law in  
 respect of  
 time for  
 trial of  
 offences.

161. A person shall not in pursuance of this Act be tried or punished for any offence triable by court-martial committed more than three years before the date at which his trial begins, except in the case of the offence of mutiny, desertion, or fraudulent enlistment; but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court, as well as by court-martial; and where a soldier has served continuously in an exemplary manner for not less than three years in any corps of His Majesty's regular forces, he shall not be tried for any such offence of desertion (other than desertion on active service), or of fraudulent enlistment, as was committed before the commencement of such three years, but where such offence was fraudulent enlistment, all service prior to such enlistment shall be forfeited.

Provided that a Secretary of State may restore all or any part of the service forfeited under this section to any soldier who may perform good or faithful service, or may otherwise be deemed by such Secretary of State to merit such restoration of service.

NOTE.

The effect of this section is that on the expiration of three years from the commission of an offence, the offender is free from being tried or punished under this Act by court-martial, for any offence except mutiny, desertion or fraudulent enlistment. Mutiny may be tried at any time. With regard to desertion and fraudulent enlistment, it is provided that except in the case

of one of the greatest of all military crimes—desertion on active service—he is not to be tried for the offence if he has served continuously in an exemplary manner for three years in a corps of the regular forces. In the case of fraudulent enlistment, inasmuch as he has chosen to quit his old corps and enter into a new contract to serve for a further term of years, he will be held to serve according to that contract and will not reckon any of his prior service; unless the Secretary of State, under the power given by the proviso to the section (which was added by the Army (Annual) Act, 1900), restores the whole or some part of the forfeited service in consideration of good or faithful service or some other meritorious conduct.

*In an exemplary manner.* This means that the man has had no entry in the regimental conduct sheet for a continuous period of three years, K.R., para. 489.

*Active service.* For definition, see s. 189.

162. (1.) If a person sentenced by a court-martial in pursuance of this Act to punishment for an offence is afterwards tried by a civil court for the same offence that court shall, in awarding punishment, have regard to the military punishment he may already have undergone.

Part IV.  
—  
ss.  
161-162.

Adjustment  
of military  
and civil  
law.

(2.) Save as aforesaid, nothing in this Act shall exempt an officer or soldier from being proceeded against by the ordinary course of law, when accused or convicted of any offence, except such an offence as is declared not to be a crime for the purpose of the provisions of this Act relating to taking a soldier out of His Majesty's service.

(3.) If an officer—

(a.) Neglects or refuses on application to deliver over to the civil magistrate any officer or soldier under his command who is so accused or convicted as aforesaid; or

(b.) Wilfully obstructs or neglects or refuses to assist constables or other ministers of justice in apprehending any such officer or soldier,

such commanding officer shall, on conviction in any of His Majesty's superior courts in the United Kingdom, or in a supreme court in India, be guilty of a misdemeanor.

(4.) A certificate of a conviction of an officer under this section, with the judgment of the court thereon, in such form as may be directed by a Secretary of State, shall be transmitted to such Secretary of State.

(5.) Any offence committed by any such commanding officer out of the United Kingdom shall, for the purpose of the apprehension, trial, and punishment of the offender, be deemed to have been committed within the jurisdiction of His Majesty's High Court of Justice in England; and such court shall have jurisdiction as if the place where the offence was committed or the offender may for the time being be were in England.

(6.) Where a person subject to military law has been acquitted or convicted of an offence by a competent civil court, he shall not be liable to be tried in respect of that offence under this Act.

## Part IV.

## NOTE.

35.  
162-163.

This section, in effect, declares that a person subject to military law is not to be exempted from the civil law by reason of his military status, so that a person acquitted or convicted of an offence by a court-martial may still be tried by a civil court for the same offence, as being an offence against the civil law. Sub-section (1), however, provides in favour of the soldier, that a civil court in awarding punishment for an offence, shall have regard to any military punishment he may already have undergone; while sub-section (6) further declares that where a person subject to military law has been acquitted or convicted of an offence by a competent civil court, he shall not be tried under military law for that offence.

As to sub-section (2), see s. 144.

Sub-section (5). It will be observed that an offence, though committed out of the United Kingdom, can be tried and punished in England. See also s. 170 (3).

Sub-section (6). If a non-commissioned officer is convicted by a civil court, the case is to be reported to an officer not below the rank of brigadier-general so that he may consider whether it is desirable to recommend the reduction of the offender: K.R., para. 506.

*Evidence.*

Regulations  
as to  
evidence.

163. (1.) The following enactments shall be made with respect to evidence in proceedings under this Act, whether before a civil court or a court-martial; that is to say,

(a.) The attestation paper purporting to be signed by a person on his being attested as a soldier, or the declaration purporting to be made by any person upon his re-engagement in any of His Majesty's regular forces, or upon any enrolment in any branch of His Majesty's service, shall be evidence of such person having given the answers to questions which he is therein represented as having given:

The enlistment of a person in His Majesty's service may be proved by the production of a copy of his attestation paper purporting to be certified to be a true copy by the officer having the custody of the attestation paper without proof of the handwriting of such officer, or of his having the custody of the paper:

(b.) A letter, return, or other document respecting the service of any person in or the discharge of any person from any portion of His Majesty's forces, or respecting a person not having served in or belonged to any portion of His Majesty's forces, if purporting to be signed by or on behalf of a Secretary of State, or of the Commissioners of the Admiralty, or by the commanding officer of any portion of His Majesty's forces, or of any of His Majesty's ships, to which such person appears to have belonged, or alleges that he belongs or had belonged, shall be evidence of the facts stated in such letter, return, or other document:

(c.) Copies purporting to be printed by a Government printer of King's Regulations, or regulations referred to in section

one hundred and forty-two of this Act, of royal warrants, of army circulars or orders, and of rules made by His Majesty, or a Secretary of State, in pursuance of this Act, shall be evidence of such regulations, royal warrants, army circulars or orders, and rules :

- (d.) An army list or gazette purporting to be published by authority, and either to be printed by a Government printer, or to be issued, if in the United Kingdom, by His Majesty's Stationery Office, and if in India, by some office under the Governor-General of India or the Governor of any Presidency in India, shall be evidence of the status and rank of the officers therein mentioned, and of any appointment held by such officers, and of the corps or battalion or arm or branch of the service to which such officers belong :
- (e.) Any warrants or orders made in pursuance of this Act by any military authority shall be deemed to be evidence of the matters and things therein directed to be stated by or in pursuance of this Act, and any copies of such warrants or orders purporting to be certified to be true copies by the officer therein alleged to be authorised by a Secretary of State or Commander-in-Chief to certify the same shall be admissible in evidence.

\* \* \* \* \*

[Paragraph (f) is repealed by the Reserve Forces Act, 1882, but is re-enacted in substance by s. 24 (2) of that Act for both the army and militia reserve : see p. 628 below.]

- (g.) Where a record is made in one of the regimental books in pursuance of any Act or of the King's Regulations, or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts thereby stated :
  - (h.) A copy of any record in one of the said regimental books purporting to be certified to be a true copy by the officer having the custody of such book shall be evidence of such record :
  - (i.) A descriptive return within the meaning of this Act, purporting to be signed by a justice of the peace shall be evidence of the matters therein stated.
- (2) For the purposes of this Act the expression "Government printer" means any printer to His Majesty, and in India any Government press.

#### NOTE.

See generally as to evidence of documents, ch. VI, paras. 30-40.

This section provides for the admissibility in evidence of a variety of documents or copies of documents used in the administration of military law,



Part IV. but does not make them conclusive evidence; therefore evidence may be given to contradict them.

ss.  
163-165.

In the case of such a document, for instance, as a letter respecting the service of a man, great caution is required as regards the identity of the accused with the person named in the document; and if the accused denies that the facts stated in any such document apply to him, independent evidence of identity must be obtained. See Rule 46 (B) and note.

Documents made evidence by this section except those mentioned in subsection (1) (c) and (d) can only be received as such when produced by a witness on oath.

(a.) *Purporting.* This expression in this and other paragraphs means that if the paper appears to be certified or to be signed as mentioned in the paragraph, it can be accepted without calling a witness to prove that it has been so certified, signed, &c., unless indeed some evidence is given to the contrary. If any evidence is produced casting a doubt on the authenticity of a document, the court should require evidence of the certificate or signature, &c., to be given by a witness.

(c.) Since 1st January, 1888, the regulations formerly notified in Army circulars have been promulgated together with General Orders under the title of Army Orders. The language of this section was modified by the Army (Annual) Act, 1895, so as to make it expressly applicable to Army Orders.

(g.) For the purpose of this paragraph it is important that the records in the regimental books should be signed by the proper officer, namely, the officer required by this Act, by the King's Regulations, or by his military duty, to make the record. A record not in the regimental books is not made evidence.

Evidence of  
civil conviction  
or  
acquittal.

164. Whenever any person subject to military law has been tried by any civil court, the clerk of such court, or his deputy, or other officer having the custody of the records of such court, shall, if required by the commanding officer of such person, or by any other officer, transmit to him a certificate setting forth the offence for which the person was tried, together with the judgment of the court thereon if he was convicted, and the acquittal if he was acquitted, and shall be allowed for such certificate a fee of three shillings. Any such certificate shall be sufficient evidence of the conviction and sentence or of the acquittal of the prisoner, as the case may be.

#### NOTE.

The object of this section is to facilitate the proof of a conviction or acquittal by a civil court.

Evidence of  
conviction  
by court-  
martial.

165. The original proceedings of a court-martial, purporting to be signed by the president thereof and being in the custody of the Judge Advocate-General, or of the officer having the lawful custody thereof, shall be deemed to be of such a public nature as to be admissible in evidence on their mere production from such custody; and any copy purporting to be certified by such Judge Advocate-General or his deputy authorised in that behalf or by the officer having such custody as aforesaid, to be a true copy of such proceedings or of any part thereof, shall be admissible in evidence



without proof of the signature of such Judge Advocate-General, deputy, or officer ; and a Secretary of State, upon production of any such proceedings or certified copy, may, by warrant under his hand, authorise the offender appearing therefrom to have been convicted and sentenced to any punishment, to be imprisoned and otherwise dealt with in accordance with the sentence in the proceedings or certified copy mentioned.

## NOTE.

This section facilitates the proof of transactions of courts-martial, by declaring that the proceedings or certified copies thereof shall be admissible in evidence.

*Purporting.* See note to s. 163.

*Shall be deemed to be of such a public nature, &c.* See 14 & 15 Viet. c. 99, s. 14, which makes a certificate of the document by the officer having the custody of it admissible in evidence, and requires the officer to furnish certified copies upon payment of not more than 4*d.* for every folio of 90 words, and enacts a punishment for false copies, and for the forgery of the officer's signature or seal.

*A Secretary of State, by warrant under his hand.* The object of this is to avoid such difficulties as arose in Lieutenant Allen's case (see ch. viii., paras. 35-37), where there is no doubt that an officer or soldier convicted abroad has been properly convicted, but no proper warrant has been sent home authorising his retention in custody. See s. 172 (4) and note.

*Summary and other Legal Proceedings.*

166. (1.) A court of summary jurisdiction having jurisdiction in the place where the offence was committed, or in the place where the offender may for the time being be, shall have jurisdiction over all offences triable in a civil court under this Act, except any such offence as is declared by this Act to be a misdemeanor, or to be punishable on indictment ; and any offence within the jurisdiction of a court of summary jurisdiction may be prosecuted, and the fine and forfeiture in respect thereof may be recovered on summary conviction, in manner provided by the Summary Jurisdiction Acts.

Prosecution of offences and recovery and application of fines.

(2.) Any proceedings taken before a court of summary jurisdiction in pursuance of this Act shall be taken in accordance with the Summary Jurisdiction Acts so far as applicable.

(3.) A court of summary jurisdiction imposing a fine in pursuance of this Act may, if it seem fit, order a portion of such fine not exceeding one-half to be paid to the informer.

(4.) Where the maximum fine or imprisonment which a court of summary jurisdiction in England, when sitting in an occasional courthouse, is authorised by law to impose is less than the minimum fine or imprisonment fixed by this Act, the court may impose the maximum fine or imprisonment which such court is authorised by law to impose, but if required by either party, shall adjourn the case to the next practicable petty sessional court.

(5.) The court of summary jurisdiction in Ireland, when hearing and determining a case arising under this Act, shall be constituted

Part IV. either of two or more justices of the peace sitting at some court or public place at which justices are for the time being accustomed to assemble for the purpose of holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the public administration of justice and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

ss.  
166-167.

(6.) Subject to the provisions of this Act with regard to the payment to the informer, fines and other sums recovered before a court of summary jurisdiction in pursuance of this Act shall, notwithstanding anything contained in any other Act, if recovered in England, be paid into the Exchequer, and if recovered in Ireland, shall be applied in manner directed by the Fines Act (Ireland), 1851, and any Acts amending the same.

14 & 15 Vict.  
c. 50.

#### NOTE.

Sects. 166, 167, and 168 are the sections ordinarily inserted in Acts of Parliament for the recovery of fines and the prosecution of offences before justices of the peace, police magistrates, or in Scotland sheriffs, who are all referred to as courts of summary jurisdiction. See the definition in s. 190 (35).

See also as regards England, the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49); under which a court of summary jurisdiction must when trying a case consist in England, except London, of two justices or of a stipendiary magistrate, and in London, of the Lord Mayor or an alderman in the city, and elsewhere of a metropolitan police magistrate.

Sub-section (4). Under the last-mentioned Act, two justices, if not sitting in a petty sessional courthouse, have only limited powers of fine and imprisonment; and such powers do not extend to imposing the minimum fine or imprisonment fixed in some cases by this Act. In such a case they may, under this subsection, impose the maximum fine or imprisonment which they can impose in ordinary cases, *i.e.*, 20s. or 14 days (42 & 43 Vict. c. 49, s. 20 (7)).

Summary  
proceedings  
in Scotland.

167. (1.) In Scotland, offences and fines which may be prosecuted and recovered on summary conviction may be prosecuted and recovered, and proceedings under this Act may be taken at the instance of the procurator fiscal of the court, or of any person in that behalf authorised by a Secretary of State or the Commander-in-Chief, or of any person authorised by this Act to complain.

(2.) All fines under this Act in default of payment, and all orders made under this Act failing compliance, may be enforced by imprisonment for a term to be specified in the order or conviction, but not exceeding three months, and the conviction and warrant may be in the form number three of Schedule K of the Summary Procedure Act, 1864.

27 & 28 Vict.  
c. 53.

(3.) All fines and other sums recovered under this Act before a court of summary jurisdiction, subject to any payment made to the informer, shall be paid to the King's and Lord Treasurer's Remembrancer, on behalf of His Majesty.

(4.) It shall be no objection to the competency of a person to

give evidence as a witness in any prosecution for offences under this Act, that such prosecution is brought at the instance of such person.

Part IV.  
—  
ss.  
167-170.

(5.) Every person convicted of an offence under this Act shall be liable in the reasonable costs and charges of such conviction.

(6.) All jurisdictions, powers, and authorities necessary for the purposes of this Act are conferred on the sheriffs and their substitutes and on justices of the peace.

(7.) The court may make, and may also from time to time alter or vary, summary orders under this Act on petition by the procurator fiscal of the court, or such person as aforesaid, presented in common form.

NOTE.

See also the Summary Jurisdiction (Scotland) Act, 1881, 44 & 45 Vict. c. 33.

168. All offences under this Act which may be prosecuted, and all fines under this Act which may be recovered on summary conviction, and all proceedings under this Act which may be taken before a court of summary jurisdiction, may be prosecuted and recovered and taken in the Isle of Man, Channel Islands, India, and any colony in such courts and in such manner as may be from time to time provided therein by law, or if no express provision is made, then in and before the courts and in the manner in which the like offences and fines may be prosecuted and recovered and proceedings taken therein by law, or as near thereto as circumstances admit.

Summary proceedings in Isle of Man, Channel Islands, India, and the colonies.

NOTE.

For definitions of India and colony see s. 190 (21), (23).

169. It shall be lawful for the Governor-General of India, and for the legislature of any colony, to provide by law for reducing any fine directed by this Act to be recovered on summary conviction to such amount as may appear to the Governor-General or legislature to be better adapted to the pecuniary means of the inhabitants, and also to declare the amount of the local currency which is to be deemed for the purposes of this Act to be equivalent to any sum of British currency mentioned in this Act.

Power of Governor-General of India and legislature of colony as to fines.

170. (1.) Any action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or in case of a continuance of injury or damage, within six months next after the ceasing thereof.

Protection of persons acting under Act.

(2.) In any such action tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after such tender, or is proceeded with after payment into court of any money in satisfaction

Part IV. of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after such tender or payment, and the defendants shall be entitled to costs, to be taxed as between solicitor and client, as from the time of such tender or payment; but this provision shall not affect costs on any injunction in the action.

SS.  
170-172.

(3.) Every such action, and also every action against a member or minister of a court-martial in respect of a sentence of such court, or of anything done by virtue or in pursuance of such sentence, shall be brought in one of His Majesty's superior courts in the United Kingdom (which courts shall have jurisdiction to try the same wherever the matter complained of occurred) or in a supreme court in India, or in any colonial court of superior jurisdiction, provided the matter complained of occurred within the jurisdiction of such Indian or Colonial court respectively, and in no other court whatsoever.

#### NOTE.

With respect to actions for damages and other proceedings against officers acting without jurisdiction or in excess of their jurisdiction, see ch. VIII, para. 40. This section prevents any such action or other proceeding being instituted after the expiration of six months from the date of the act or default complained of.

Actions can be brought in courts at home in respect of acts done abroad. See ch. VIII, paras. 56, 57.

See note to para. 102 of ch. VIII as to the modifications introduced into this section by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).

#### *Miscellaneous.*

Exercise of  
powers  
vested in  
holder of  
military  
office.

171. Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service, or according to rules made under section seventy of this Act.

#### NOTE.

The object of this section is to prevent any legal difficulties arising from the usage of the army relating to the delegation of authority by one officer to another. For example, an officer authorised by the commanding officer to tell off offenders can exercise the powers of the commanding officer under sect. 46. Again, a report which is directed by this Act to be made to a general officer or to an officer having power to convene or confirm courts-martial may be addressed to the adjutant or other person to whom such reports are usually addressed. See also Rule 131.

Provisions  
as to war-  
rants and  
orders of  
military  
authorities.

172. (1.) Where any order is authorised by this Act to be made by the Commander-in-Chief or the Adjutant-General, or by the Commander-in-Chief or Adjutant-General of the forces in India, or by any general or other officer commanding, such order may be signified by an order, instruction, or letter under the hand of any officer authorised to issue orders on behalf of such Commander-in-Chief, Adjutant-General, or general or other officer commanding, and an order, instruction, or letter purporting to be signed by any

officer appearing therein to be so authorised shall be evidence of his being so authorised. Part IV.

s. 172.

(2.) The foregoing enactment of this section shall extend to any order or directions issued in pursuance of this Act in relation to a military convict or military prisoner or soldier undergoing detention, and any such order or directions shall not be held void by reason of the death or removal from office of the officer signing or ordering the issue of the same, or by reason of any defect in such order or directions, if it be alleged in such order or directions that the convict, or prisoner, or soldier has been convicted, and there is a good and valid conviction to sustain the order or directions.

(3.) An order in any case if issued in the prescribed form shall be valid, but an order deviating from the prescribed form if otherwise valid shall not be rendered invalid by reason only of such deviation.

(4.) Where any military convict, or military prisoner, or soldier undergoing detention, is for the time being in custody, whether military or civil, in any place or manner in which he might legally be kept in pursuance of this Act, the custody of such convict, or prisoner, or soldier, shall not be deemed to be illegal only by reason of any informality or error in or as respects the order, warrant, or other document, or the authority by or in pursuance whereof such convict, or prisoner, or soldier was brought into or is detained in such custody, and any such order, warrant, or document may be amended accordingly.

(5.) Where a military convict, or a military prisoner, or a soldier undergoing detention, or a person who is subject to military law and charged with an offence, is a prisoner or soldier in military custody, and for the purpose of conveyance by sea is delivered on board a ship to the person in command of the ship or to any other person on board the ship acting under the authority of the commander, the order of the military authority which authorises the prisoner or soldier to be conveyed by sea shall be a sufficient authority to such person, and to the person for the time being in command of the ship, to keep the said prisoner or soldier in custody and convey him in accordance with the order, and the prisoner or soldier while so kept shall be deemed to be kept in military custody.

#### NOTE.

Sub-section (1). The object of this sub-section is similar to that of s. 171. It will allow orders of a general or other officer to be signed by the staff officer or adjutant as authorised by the custom of the service, but the confirmation of courts-martial, and warrants or other documents relating to imprisonment or detention or the infliction of any other punishment must be signed by the officer himself.

Sub-sections (2) and (3) are introduced with a view to prevent military proceedings from being rendered void by merely technical objections.



## Part IV.

Sub-section (3). *Prescribed.* See Rule 133.

ss.

172-174.

Sub-section (4). This sub-section is introduced for the same object as sub-sections (2) and (3). These sub-sections would probably not meet a case where the order, warrant, or document is issued by a person having no authority to issue it. In such a case it will be advisable to procure a warrant from a Secretary of State under s. 165.

Furlough  
in case of  
sickness.

173. If any soldier on furlough is detained by sickness or other casualty rendering necessary any extension of such furlough in any place, and there is not any officer in the performance of military duty of the rank of captain, or of higher rank, within convenient distance of the place, any justice of the peace who is satisfied of such necessity may grant an extension of furlough for a period not exceeding one month; and the said justice shall by letter immediately certify such extension and the cause thereof to the commanding officer of such soldier if known, and if not, then to a Secretary of State. The soldier may be recalled to duty by his commanding officer or other competent military authority, and the furlough shall not be deemed to be extended after such recall; but, save as aforesaid, the soldier shall not in respect of the period of such extension of furlough be liable to be treated as a deserter or as absent without leave.

## NOTE.

A soldier who makes a false statement to an officer or justice in respect of extension of his furlough may be tried and punished by court-martial: s. 27 (4).

Licences of  
canteens.

174. (1.) When a person holds a canteen under the authority of a Secretary of State or the Admiralty, it shall be lawful for any two justices within their respective jurisdictions to grant, transfer, or renew any licence for the time being required to enable such person to obtain or hold any excise licence for the sale of any intoxicating liquor, without regard to the time of year, and without regard to the requirements as to notices, certificates, or otherwise, of any Acts for the time being in force affecting such licences; and excise licences may be granted to such person accordingly.

(2.) For the purposes of this section the expression licence includes any licence or certificate for the time being required by law to be granted, renewed, or transferred by any justices of the peace, in order to enable any person to obtain or hold any excise licence for the sale of any intoxicating liquor.

## NOTE.

This section now applies only as regards Ireland, having been repealed as regards England by the Licensing Act, 1902 (2 Edw. 7, c. 28), ss. 33, 34 (2), Sch., and as regards Scotland by the Licensing (Scotland) Act, 1903 (3 Edw. 7, c. 25), s. 110, Sch. xiii. Under the provisions of s. 23 of the Act of 1902 and s. 50 of the Act of 1903 respectively, excise licences for military canteens may be granted in England and Scotland without a justice's licence or certificate to any persons holding canteens under the authority of a Secretary of State.



174A. Notwithstanding anything in the Disorderly Houses Act, Part IV. 1751, or in the Theatres Act, 1843, where a recreation room is managed or conducted under the authority of a Secretary of State or the Admiralty, it may be used for public dancing, music, or other public entertainment of the like kind or for the public performance of stage plays, without any licence in pursuance of those Acts, or either of them.

s. 174A.  
Use of  
recreation  
rooms  
without  
licence.  
25 Geo. 2,  
c. 36.  
6 & 7 Vict.  
c. 68.

## NOTE.

The object and effect of this section is to dispense with the necessity for a licence being obtained, where music, dancing, or any other public entertainment is carried on in a recreation room which is managed under the authority of the Secretary of State for War or of the Admiralty.

## PART V.

## APPLICATION OF MILITARY LAW, SAVING PROVISIONS, AND DEFINITIONS.

Part V.

*Introductory Observations.*

Part V of the Act points out the persons who are subject to military law, that is to say, who are liable to be tried and punished by courts-martial for military and in some circumstances for civil offences under the provisions of the Act.

Application  
of Act to  
persons as  
officers or  
soldiers.

Such persons are of three descriptions: first, the regular forces, that is to say, the British forces, the Indian forces, and the colonial forces; secondly, the auxiliary forces, that is to say, the militia, the yeomanry, and the volunteers; thirdly, persons subject to military law not belonging to either the regular or the auxiliary forces, that is to say, either followers of the regular forces, or persons employed in or with the regular forces when on active service. The regular forces include the Royal Marines when on shore and the reserve forces when called out.

The sections relating to the liability of persons subject to military law divide them as follows: (i) persons subject to military law as officers (s. 175), and (ii) persons subject to military law as soldiers (s. 176). Sections are then added pointing out the modifications which are necessary with respect to the Royal Marines, the Indian forces, and the auxiliary forces, and with respect to certain members of the regular forces, that is to say, warrant officers and non-commissioned officers, and with respect to the reserve; also with respect to persons who, though subject to military law as above stated, belong neither to the regular nor to the auxiliary forces.

The officers of the land forces (commonly called officers of the regular forces) form of course the principal class of persons subject to military law as officers.

Officers of  
regular  
forces.

The expression "officer" is defined by s. 190 (4) of the Act to mean an officer commissioned or in pay as an officer in His Majesty's forces, or any arm, branch, or part thereof; also any person who by virtue of his commission is appointed to any department or corps of any of the said forces; also any person, whether retired or not, who by virtue of his commission, or otherwise, is legally entitled to the style and rank of an officer of any of the said forces.

Every officer, as so defined, is not necessarily subject to military law. By section 175 (1), that law applies to officers of the regular forces on the active list; but officers of the regular forces who are not on the active list are not as such subject to military law, though they become so subject if employed on

Part V. military service under an officer of the regular forces, or if they are members of the permanent staff of the militia, yeomanry, or volunteers.

The meaning of "active list" must be ascertained by reference to the Royal Warrant relating to pay. Under the warrant now in force, service on the active list includes full pay service and half pay service, and full pay service includes:—

- (a.) Service with a regiment or on the staff;
- (b.) Service while seconded; and
- (c.) Service while on the temporary reserve list of the Engineers.

Under the above warrant, "half-pay" applies only to officers who are on the half-pay list in anticipation of future employment in service on the active list. Officers who have retired from the active list are no longer included under the expression "half pay officers," and the pay they receive is termed "retired pay."

Warrant officers.

By s. 190 (4) warrant and other officers holding honorary commissions are declared to be officers within the meaning of the Act, and are consequently amenable to military law as officers.

Officers of marines and of Indian forces.

The expression "regular forces" is defined by s. 190 (8), to include the Royal Marines and His Majesty's Indian forces, and officers in those forces are therefore subject to military law as above mentioned, but with certain modifications made by the Act in their respective cases, the details of which are mentioned in ss. 179 and 180 and notes thereon. The most important are as follows:—

As regards the Marines, the jurisdiction of the Admiralty over them is not interfered with; and when borne on the books of any ship in commission, they are, speaking generally, subject to the laws governing the Navy.

As regards His Majesty's Indian forces, *native* officers, soldiers, and followers of His Majesty's Indian forces are amenable to the Indian Articles of War, though courts-martial for their trial *may* be convened by any officers duly authorised to convene courts-martial under this Act.

Officers of militia, yeomanry, and volunteers.

Next in importance are all yeomanry officers who have received commissions since the 16th August, 1901, and the militia officers; these are at all times subject to military law: s. 175 (3), and the Militia and Yeomanry Act, 1901 (1 Edw. 7, c. 14), s. 1.

Yeomanry officers, if they have not received commissions as such since the 16th August, 1901, and volunteer officers, on the other hand, not belonging to the permanent staff, are only subject to military law when in actual command of men who are subject to military law, or when their corps is called out, or when, with their own consent, they are attached to or doing duty with any body of troops (whether regular or auxiliary) subject to military law, or are ordered on duty by the military authorities, s. 175 (5) (6). The effect of these enactments is shortly, that volunteer officers and those yeomanry officers who are on the old footing are subject to military law whenever the men actually under their command are so subject, or their corps is on actual military service; and also whenever they are doing duty, apart from their corps, with any body of troops (whether regular or auxiliary) who are so subject. See further as to the yeomanry, ch. IX, para. 112A. As to "actual military service," in the case of volunteers, see s. 17 of the Volunteer Act, 1863 (26 & 27 Vict. c. 65), as amended by the Volunteer Act, 1900 (63 & 64 Vict. c. 39).

Reserve officers.

Officers belonging to the Reserve of Officers and officers belonging to the Indian Army Reserve of Officers, are subject to military law only in the circumstances mentioned in paragraphs (10) and (9) respectively of s. 175; see also Pay Warrant, Part 1, Section XII.

There remain certain persons who, without being commissioned officers of any branch of His Majesty's service, are nevertheless declared in particular circumstances to become subject to military law as officers, namely:—

Part V.

(i.) Officers of forces raised out of the United Kingdom and India, and serving under an officer of the regular forces, see s. 175 (4) and note.

Other persons subject to military law as officers.

(ii.) Officers of strictly colonial forces. See s. 177 and note.

(iii.) Persons who under the orders of a Secretary of State, or of the Governor-General of India, accompany in an official capacity any of His Majesty's troops on active service in any place beyond the seas; with the qualification that such a person, if a native of India amenable to Indian military law, will be subject to that law. See s. 175 (7) and note.

(iv.) Persons accompanying a force on active service, and holding from the commanding officer of the force passes entitling them to be treated as officers. See s. 175 (8) and note.

All soldiers of the regular forces are, as a matter of course, subject to military law (s. 176 (1)), including in the expression "soldier" warrant officers not having honorary commissions, and non-commissioned officers, s. 190 (5), (6). There are, however, certain special provisions as to the trial and punishment of warrant officers and non-commissioned officers (ss. 182, 183) which must be borne in mind in dealing with the case of any such officer. Here also it must be remembered that the regular forces include, subject to certain modifications, the Royal Marines and His Majesty's Indian forces.

Soldiers of the regular forces.

S. 176 (2), coupled with s. 181 (2), obviates, by an express provision, any doubt that could possibly have been raised as to the application of military law to all non-commissioned officers and men of the permanent staff of the militia, yeomanry, and volunteers.

Non-commissioned officers and men of forces raised out of the United Kingdom and India, and under the command of an officer of regulars, are also subject to military law as soldiers. S. 176 (3), and note. As to men of colonial forces, see s. 177, and note.

Colonial forces.

All pensioners not otherwise subject to military law are made so whenever they are employed in military service under the orders of an officer of the regular forces, and the Act will apply to them as if they were part of the regular forces: ss. 176 (4) and 178, and notes.

Pensioners.

Beside the regular forces, men of the reserve and auxiliary forces are subject to military law when called out for service; and men in the reserve (like pensioners) also when they are employed in military service under the orders of an officer of the regular forces.

Reserve and auxiliary forces.

This liability arises partly under the Army Act and partly under the Acts relating to the reserve and auxiliary forces respectively. See ch. IX, para. 91, and ch. XI.

Men in the Army or Militia Reserve Force when called out are subject to military law under the Army Act (see s. 176 (5)), and Reserve Forces Act, 1882, s. 14. As to reservists employed in military service, see Army Act, s. 176 (5) (d).

A Militia Reserve man cannot as such be called out in aid of the civil power, and, except on the occasions above mentioned, is not, except so far as he may be a militiaman, subject to military law. An Army Reserve man, on the other hand, is in a modified way at all times subject to military law, inasmuch as he is liable to be tried by a court-martial under s. 6 of the Reserve Forces Act, 1882, for the offences mentioned in that section, which are failure to attend at any place when required, insubordinate behaviour to superior officers, and non-compliance with the regulations for the payment or government of the force.

Army and Militia Reserve.

**Part V.** A militiaman as above mentioned (see ch. XI, para. 46), is liable to a preliminary training; and every part of the militia is liable to be called out for an annual training or to be embodied for actual service. When the corps or other body to which a non-commissioned officer or man belongs is called out for training, or embodied, that non-commissioned officer or man is subject to military law. The individual militiaman is also subject to military law during his preliminary training, or when he is undergoing any other training with a portion of the regular forces or otherwise, or when he is attached to or otherwise acting as part of the regular forces. See s. 176 (6) (which superseded ss. 56 and 57 of the Militia (Voluntary Enlistment) Act, 1875, now repealed), and Militia Act, 1882, ss. 23-27. Also a militiaman who volunteers to serve under s. 2 of the Reserve Forces and Militia Act, 1898, is, whilst so serving, subject to military law.

**Yeomanry.** As to the liability of a member of the yeomanry enlisted after the 16th August, 1901, to be called out for an annual training or for actual service, see ch. XI, paras. 47, 48, 58; as to the liability of other yeomen, see ch. IX, para. 112.

A yeoman enlisted after the 16th August, 1901, is subject to military law in the same manner as a militiaman, and is also so subject when serving in aid of the civil power; as to the position of other yeomen, see ch. IX, para. 112.

**Volunteers.** When a volunteer corps or part of a volunteer corps is called out into actual military service (see ch. XI, para. 65), every member of that corps or part of a corps is subject to military law. Individual members of the volunteer corps are also subject to military law when they are being trained or exercised with or are attached to or acting with any regular force, or when they are being trained or exercised with any portion of the militia when subject to military law, and when a body of volunteers assemble for the purpose of proceeding to the place where they are to be so trained or exercised they are so subject from the time they fall in for that purpose till the time when they are dismissed on their return from that place. (See *Marks v. Frogley* [1898] 1 Q.B. 888.)

A volunteer who is called out for actual military service under s. 2 of the Volunteer Act, 1900, is, during that service, subject to military law.

It is the duty of the commanding officer of a volunteer force, except when the corps is called out, to provide for members of the corps, before entering on any service in which they will become subject to military law, being informed that they will be so subject, and having an opportunity of withdrawing from that service; but the absence of such notice will not exempt the volunteer. See s. 176 (8), which has superseded s. 23 of the Volunteer Act, 1863 (26 & 27 Vict. c. 65), now repealed.

When a volunteer is subjected to military law, he may be punished by dismissal, in the event of his committing any offence triable by a court-martial or by a commanding officer; s. 181 (6).

**General provisions respecting application of military law to auxiliary forces.** In the case of the auxiliary forces the distinction between the case of the corps being subject to military law and of individual members being subject to military law is important. In the former case every member of the corps, whether present with the corps or not, is subject to military law, and if absent improperly can be dealt with as a deserter or absentee without leave (see Militia Act, 1882, ss. 23, 24, as to militiamen and yeomen). Wherever the individual members only are subject, absent members are exempt. The reason is obvious, especially in the case of the volunteers. If the corps is called out for actual service under proclamation, anyone who does not attend is a deserter. If, on the other hand, a volunteer corps goes out for a field

day with a portion of the regular forces, it is optional with the members of that corps whether they do or do not attend, but if they attend they must be subject to the same rules and discipline as the forces with which they are serving, and must therefore be subject to military law.

Lastly. When troops are on active service abroad it is absolutely necessary for the sake of military operations and discipline, that civilians who accompany them should be under the control of military officers and tribunals.

Persons not belonging to His Majesty's forces, but subject to military law as soldiers.

Civilians who accompany troops in an official capacity or who have obtained the privilege of a pass from the commanding officer of the force will, as already noticed, be subject to military law as officers. All other civilians, commonly known as followers, who accompany the troops either as sutlers or on other business connected with the forces, or for purposes of business not necessary to the forces, or of pleasure or otherwise, will be subject to military law as soldiers.

The only modification in the application of the Act to persons who do not belong to His Majesty's forces which requires notice here, is that such a person cannot be punished by a commanding officer and cannot be tried by regimental court-martial.

As to the trial and punishment of a person who or whose corps has ceased to be subject to military law since the commission of the offence, see s. 158 and note.

*Persons subject to Military Law.*

175. The persons in this section mentioned are persons subject to military law as officers, and this Act shall apply accordingly to all the persons so specified ; that is to say,

Persons subject to military law as officers.

(1.) Officers of the regular forces on the active list, within the meaning of any Royal Warrant for regulating the pay and promotion of the regular forces, and officers not on such active list who are employed on military service under the orders of an officer of the regular forces who is subject to military law :

(2.) Officers who are members of the permanent staffs of any of the auxiliary forces, and are not otherwise subject to military law :

(3.) Officers of the militia other than members of the permanent staff :

(3A.) Officers of the Territorial Force other than members of the permanent staff :

(4.) All such persons not otherwise subject to military law as may be serving in the position of officers of any troops or portion of troops raised by order of His Majesty beyond the limits of the United Kingdom and of India, and serving under the command of an officer of the regular forces :

Provided that nothing in this Act shall affect the application to such persons of any Act passed by the legislature of a colony :

(5.) Officers of the yeomanry, and officers of the volunteers, whenever in actual command of men who are, in pursuance of this Act, subject to military law, or when their corps is on actual military service :

(6.) Any officer of the yeomanry or volunteers, whether in receipt of pay or otherwise, during and in respect of the time when with his own consent he is attached to or doing duty with any body of troops for the time being subject



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to military law, whether of the regular or auxiliary forces, or, with his own consent, is ordered on duty by the military authorities :

- (7.) Every person not otherwise subject to military law who under the general or special orders of a Secretary of State or of the Governor-General of India accompanies in an official capacity equivalent to that of officer any of His Majesty's troops on active service in any place beyond the seas, subject to this qualification, that where such person is a native of India, he shall be subject to Indian military law as an officer :
- (8.) Any person, not otherwise subject to military law accompanying a force on active service who shall hold from the commanding officer of such force a pass revocable at the pleasure of such commanding officer entitling such person to be treated on the footing of an officer :
- (9.) The persons holding commissions as officers in the Indian Army reserve when such officers are called out in any military capacity.
- (10.) Any reserve officer, within the meaning of the Royal Warrant regulating the composition of the reserve of officers, when he is ordered on any duty or service, for which, as reserve officer, he is liable.

#### NOTE.

Paragraph (3). This now applies to all yeomanry officers commissioned after the 16th August, 1901, who are therefore subject to military law at all times.

Paragraph (4). This is not meant to include strictly colonial forces, but only forces raised at the Imperial expense: see ch. XI, para. 3. See also s. 176 (3) and note. As to strictly colonial forces, see s. 177.

Paragraph (5). It will be observed that officers of the volunteers and those officers of the yeomanry to whom this paragraph continues to apply (*i.e.*, those who received commissions not later than 16th August, 1901), are not subject to military law under this paragraph, except when they are in actual command of men subject to military law (see s. 176 (7) and (8)), or when their corps is on actual military service. Consequently, an officer of volunteers who is not present at a field day at which the volunteers are brigaded with regular troops is not subject to military law, though if he were present with his corps he would be so subject. Such an officer may also be subject to military law under the Acts relating to the yeomanry and volunteers. (See as to yeomanry 44 Geo. 3, c. 54, ss. 22, 23; as to volunteers, 26 & 27 Vict. c. 65, s. 17; and A.D. and R. (Commencement) Act, 1879, s. 5.)

Paragraphs (7) and (8). These paragraphs make certain persons subject to military law as officers, who would otherwise be subject under s. 176 (10) to trial and punishment as soldiers. The first extends to persons attached to a military expedition by order of the Secretary of State or the Governor-General of India in a diplomatic, scientific, or other official capacity. The second would apply to persons like contractors or newspaper correspondents, who obtain passes from the commanding officer of the force directing them to be treated as officers. It will be observed that an official of the Governor-



General, who is a native of India, will be subject to Indian military law See s. 180 (2).

See s. 184 for special provisions applicable to persons made subject to military law by these paragraphs.

Paragraph (10). This paragraph was added by the Army (Annual) Act, 1904. See Pay Warrant, Part I, Section XII, as to the composition of the Reserve of Officers.

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176. The persons in this section mentioned are persons subject to military law as soldiers, and this Act shall apply accordingly to all the persons so specified; that is to say,

Persons  
subject to  
military  
law as  
soldiers.

- (1.) All soldiers of the regular forces :
- (2.) All non-commissioned officers and men of the permanent staff of any of the auxiliary forces who are not otherwise subject to military law :

- (3.) All non-commissioned officers and men serving in a force raised by order of His Majesty beyond the limits of the United Kingdom and of India, and serving under the command of an officer of the regular forces :

Provided that nothing in this Act shall affect the application to such non-commissioned officers and men of any Act passed by the legislature of a colony.

- (4.) All pensioners not otherwise subject to military law who are employed in military service under the orders of an officer of the regular forces :

- (5.) All non-commissioned officers and men belonging to the army reserve force or the militia reserve force,—

- (a.) When called out for training and exercise ; and
- (b.) When called out for duty in aid of the civil power ; and
- (c.) When called out on permanent service ; \* \* \*
- (d.) When employed in military service under the orders of an officer of the regular forces :

- (6.) All non-commissioned officers and men in the militia of the United Kingdom,—

- (a.) During their preliminary training ; and
- (b.) When they or the body of militia to which they belong are being trained or exercised either alone or with any portion of the regular forces or otherwise ; and
- (c.) When attached to or otherwise acting as part of or with any regular forces ; and
- (d.) When embodied :

- (6A.) All non-commissioned officers and men belonging to the Territorial Force—

- (a.) When they are being trained or exercised, either alone or with any portion of the regular forces or otherwise ; and
- (b.) When attached to or otherwise acting as part of or with any regular forces ; and
- (c.) When embodied ; and
- (d.) When called out for actual military service for purposes of defence in pursuance of any agreement.

- (7.) All non-commissioned officers and men belonging to the yeomanry force of the United Kingdom,—

- (a.) When they or their corps are being trained or exercised, either alone or with any portion of the regular forces or with any portion of the militia when subject to military law ; and

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- (b.) When they are attached to or otherwise acting as part of or with any regular forces ; and
- (c.) When their corps is on actual military service ; and
- (d.) When serving in aid of the civil power :
- (8.) All non-commissioned officers and men belonging to the volunteer forces of the United Kingdom,—
  - (a.) When they are being trained or exercised with any portion of the regular forces or with any portions of the militia when subject to military law ; and
  - (b.) When they are attached to or otherwise acting as part of or with any regular forces ; and
  - (c.) When their corps is on actual military service :

Provided that it shall be the duty of the commanding officer of any part of the volunteer force not in actual military service, when he knows that any non-commissioned officers or men belonging to that force are about to enter upon any service which will render them subject to military law, to provide for their being informed that they will become so subject, and for their having an opportunity of abstaining from entering on that service.

- (9.) All persons who are employed by or are in the service of any of His Majesty's troops when employed on active service beyond the seas, and who are not under the former provisions of this Act subject to military law :

- (10.) All persons not otherwise subject to military law who are followers of or accompany His Majesty's troops, or any portion thereof, when employed on active service beyond the seas ; subject to this qualification that where any such persons are employed by or are followers of, or accompany any portion of His Majesty's forces consisting partly of His Majesty's Indian forces subject to Indian military law, and such persons are natives of India, they shall be subject to Indian military law.

#### NOTE.

Paragraph (2). See s. 181 (2).

*Otherwise subject, &c.* Soldiers posted to the volunteer permanent staff in their territorial regiment would be "otherwise," i.e., as being in the regular forces, subject to military law.

Paragraph (3). This is not intended to include strictly colonial forces, but only forces raised at the Imperial expense, whose maintenance is voted annually by Parliament. It might, however, no doubt extend to a force raised under a Colonial Act, but under the Imperial control. But strictly colonial forces are dealt with by s. 177. See further ch. XI, para. 3.

Paragraph (4). See s. 178. Pensioners who are not from any other cause subject to military law, will only be so subject if they are actually employed in military service under the orders of an officer of the regular forces. A pensioner employed as canteen steward, though wearing no uniform and performing no military duty, has been held to be subject to military law under his paragraph. *Re Flint*, L.R. 15 Q.B.D. 488.

Paragraph (5). As to the power to try by court-martial an Army Reserve man who on two consecutive occasions fails to comply with the regulations respecting pay, or fails to attend at an appointed place, or is insubordinate to a superior officer, or obtains pay by any fraudulent means, or fails to comply with the regulations for the government of the forces, see s. 6 of the Reserve Forces Act, 1882.

Paragraphs (6), (7), and (8). *Being trained or exercised with.* The period during which militiamen and volunteers are subject to military law by reason of their being trained or exercised with troops subject to military law extends from the time when they fall in for the purpose of proceeding to the place to be trained or exercised with such troops till the time when they are dismissed or returning from that place. See *Marks v. Frogley* [1898] 1 Q.B. 888.

Paragraph (6). The local militia, if they were to be raised (see ch. IX, paras. 103, 105), would be also subject to military law under the Acts relating to them, and the A. D. and R. (Commencement) Act, 1879, s. 5. As regards the application of the Act to these forces, see ss. 178, 181.

This paragraph (except the provision as to preliminary training) now applies also to all yeomen enlisted after the 16th August, 1901; Militia and Yeomanry Act, 1901 (1 Edw. 7, c. 11), s. 1.

Paragraph (7). This paragraph (except so far as it applies to yeomanry serving in aid of the civil power) now applies only in the case of yeomen enlisted not later than the 16th August, 1901.

As to the provisions of the Yeomanry Acts, making the yeomanry subject to military law, see ch. IX, para. 112. As to the application of the Act to the yeomanry, see ss. 178, 181, and notes.

Paragraph (8). As to the application of the Act to volunteers, see ss. 178, 181, and introductory observations to this part of the Act. As to "actual military service," see the Volunteer Act, 1863 (26 & 27 Vict. c. 65), s. 17.

*Informed.* This information must be given on each occasion of entering on service, but it may be given by an insertion in the notice for the corps to parade that a person who attends will become subject to military law, and that he is at liberty not to attend.

Paragraphs (9) and (10). See introductory observations to this part of the Act.

See s. 184 for special provisions applicable to persons made subject to military law by paragraph (10).

177. Where any force of volunteers, or of militia, or any other force, is raised in India or in a colony, any law of India or the colony may extend to the officers, non-commissioned officers and men belonging to such force, whether within or without the limits of India or the colony; and where any such force is serving with part of His Majesty's regular forces, then so far as the law of India or the colony has not provided for the government and discipline of such force, this Act and any other Act for the time being amending the same shall, subject to such exceptions and modifications as may be specified in the general orders of the general officer commanding His Majesty's forces with which such force is serving, apply to the officers, non-commissioned officers, and men of such force, in like manner as they apply to the officers, non-commissioned officers and men respectively mentioned in the two preceding sections of this Act.

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ss.

176-177.

Persons belonging to colonial forces, and subject to military law as officers or soldiers.

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## NOTE.

For definitions of "India" and "colony," see s. 190 (21), (23).

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177-179.

This section applies to what may be termed strictly colonial forces, that is to say, forces raised on the responsibility of the government of the colony.

So long as such forces are within the colony their discipline can be provided for by the law of the colony. This section removes any doubts as to whether that law would apply to such forces when outside the limits of the colony.

In order to prevent difficulties arising from deficiencies of the colonial law in cases where the colonial forces are serving with the regular forces, the section provides that such deficiencies may be remedied by the application of the Army Act, subject to any modification made by general orders of the general officer commanding the regular forces in question.

Mutual  
relations of  
regular  
forces and  
auxiliary  
forces.

**178.** When officers, non-commissioned officers, and men belonging to the auxiliary forces, or any pensioners, are subject to military law in pursuance of this Act, such officers, non-commissioned officers, men and pensioners shall be subject to this Act in all respects as if they were part of the regular forces, and the provisions of this Act shall be construed as if such officers, non-commissioned officers, men and pensioners were included in the expression "regular forces": Provided that nothing in this section contained shall affect the conditions of service of any officer, non-commissioned officer, or man belonging to such auxiliary forces, or of any pensioner.

## NOTE.

The effect of this section combined with s. 50 (1), and with the repeal of the provisions of the Militia and Volunteer Acts by which members of those corps are to be tried by their own officers, is to enable regular officers, militia officers, yeomanry officers on the new footing, and also, when subject to military law, yeomanry officers on the old footing and volunteer officers, to sit indiscriminately on courts-martial for the trial of members of the regular forces and members of the auxiliary forces. Rule 20 (B), however, provides that the militia, yeomanry, and volunteers respectively are, if practicable, to be represented on any court-martial trying a militiaman, yeoman, or volunteer. As to removal of doubts respecting command, see s. 71.

Under s. 158 a militiaman, yeoman, or volunteer who has ceased to be subject to military law can, within three months afterwards, be tried by court-martial for an offence committed while he was so subject. See, as regards the qualification of s. 158 in the case of certain offences by militiamen and yeomen, s. 43 (2) of the Militia Act, 1882.

Modifica-  
tion of Act  
with respect  
to Royal  
Marines.

**179.** In the application of this Act to His Majesty's Royal Marines, the following modifications shall be made:—

- (1.) Nothing in this Act shall prejudice any power of the Admiralty to make Articles of War for the Royal Marines or otherwise prejudice the authority of the Admiralty over the Royal Marines or confer on any officers who are not officers of the Royal Marines any greater authority to command the Royal Marines than they have heretofore used; and a general court-martial for the trial of an officer or man in the Royal Marines shall not be convened except by an officer authorised by a warrant from the Admiralty

in pursuance of this section, and except that, where such officer or man while subject to this Act is serving beyond the seas with any other portion of the regular forces, and in the opinion of the general or other officer commanding those forces (such opinion to be stated in the order convening the court and to be conclusive), there is not present any officer authorised by warrant from the Admiralty to convene a general court-martial, a general court-martial convened by such general or other officer, if authorised to convene general courts-martial, may try such officer or man :

- (2.) A district court-martial for the trial of a man in the Royal Marines may be convened by any officer having authority to convene a district court-martial for the trial of any soldier of any other portion of the regular forces :
- (3.) Any power in relation to the convening of courts-martial, or of authorising an officer to convene courts-martial, or to delegate the powers of convening courts-martial, or of confirming the findings and sentences of courts-martial, or otherwise in relation to courts-martial, which under this Act His Majesty may exercise by any warrant or warrants, may be exercised in His Majesty's name by a warrant or warrants from the Admiralty ; and any such warrant may be addressed to any officer to whom any warrant of His Majesty can be addressed :
- (4.) Any power vested by this Act in His Majesty in relation to the confirmation of the findings and sentences of courts-martial, or otherwise in relation to courts-martial, may be exercised by the Admiralty :
- (5.) Without prejudice to any power of confirmation, the findings and sentences of any general or district court-martial on an officer or man of the Royal Marines may be confirmed by an officer authorised under this section to convene the same, or by any officer otherwise authorised under this Act to confirm the findings and sentences of general or district courts-martial, as the case may be, for the trial of any soldier of any other portion of the regular forces :
- (6.) Any power vested in His Majesty by this Act in relation to the making of rules, or to any order with respect to pay, or to any complaint in respect of an officer who thinks himself wronged, shall be vested in and exercised by the Admiralty, and the provisions of this Act respectively relating to such rules, orders, and complaints shall be construed, so far as respects the Royal Marines, as if the "Admiralty" were substituted for His Majesty, as well as for the Secretary of State :



- Part V. (7.) Anything required or authorised by this Act to be done by,  
 s. 179. to, or before a Secretary of State, the Commander-in-Chief, Adjutant-General, or Judge Advocate-General may, as regards the Royal Marines, be done by, to, or before the Admiralty; and the provisions of this Act shall be construed, so far as respects the Royal Marines, as if "the Admiralty" were substituted for "Secretary of State," "Commander-in-Chief," "Adjutant-General," and "Judge Advocate-General," wherever those words occur :
- (8.) Anything required or authorised by this Act to be done by, to, or before the Commander-in-Chief of the forces in India, or the general or other officer commanding the forces in any colony or elsewhere may, as regards the Royal Marines, be done by, to, or before such officer as the Admiralty may by warrant from time to time appoint in that behalf, and if no such appointment is made, by such Commander-in-Chief or general or other officer :
- (9.) Anything authorised by this Act to be done by Royal Warrant may be done, as regards the Royal Marines, by warrant of the Admiralty; and the provisions of this Act with respect to Royal Warrants printed by the Government printer shall apply to any warrants of the Admiralty under this Act :
- (10.) Anything authorised to be done by the deputy of the Judge Advocate-General may be done by any one of the Commissioners for executing the office of Lord High Admiral, or by a secretary of the Admiralty :
- (11.) In the provisions of this Act with respect to evidence, the expression "King's Regulations" shall be deemed to include Admiralty Regulations :
- (12.) Nothing in the provisions of this Act relating to the term of enlistment, to the conditions of service, to appointment or transfer, to transfer to the reserve, to the re-engagement or prolongation of service, or to forfeiture of service of a soldier of the regular forces, or to the rules or reckoning service for discharge or transfer to the reserve shall apply to the Royal Marines :

Save that if regulations made by a Secretary of State and the Admiralty provide for the transfer of men of the Royal Marines to any other part of His Majesty's regular forces, a man of the Royal Marines may, with his consent, be so transferred in accordance with the said regulations, and subject to those regulations shall become a soldier of the said part of His Majesty's regular forces in like manner, so nearly as circumstances admit, as if he had been enlisted in pursuance of this Act :



And save that if any regulations so made provide for the transfer to the Royal Marines of men belonging to any other part of His Majesty's regular forces, a man belonging to such part may, with his consent, be so transferred in accordance with the said regulations, and, subject to those regulations, shall become a man of the Royal Marines in like manner, so nearly as circumstances admit, as if he had been enlisted in pursuance of the Acts relating to the Royal Marines :

- (13.) A marine on his re-engagement shall make a declaration either before a justice of the peace or person having under this Act the same authority as a justice of the peace for the purposes of enlistment, or before a naval officer commanding any ship commissioned by His Majesty, or before the commanding officer of any battalion or detachment of Royal Marines, in the form from time to time directed by the Admiralty :
- (14.) A man in the Royal Marines shall, for absence without leave, on conviction of that offence by court-martial, and for fraudulent enlistment, forfeit his service in like manner as he forfeits it for desertion under the Acts relating to the Royal Marines :
- (15.) Officers and men of the Royal Marines, during the time that they are borne on the books of any ship commissioned by His Majesty (otherwise than for service on shore), shall be subject to the Naval Discipline Act, and to the laws for the government of officers and seamen in the Royal Navy, and to the rules for the discipline of the Royal Navy for the time being, and shall be tried and punished for any offence in the same manner as officers and seamen in the Royal Navy :

29 & 30 Vict.  
c. 109, as  
amended  
by 47 & 48  
Vict. c.

Provided that—

- (a.) The last-mentioned provision shall not prevent the application of this Act to any person dealing with or having any relations with any such officer or man of the Royal Marines, or to any such officer or man if found on shore as a deserter or absentee without leave ; and
  - (b.) If any such officers or men of the Royal Marines are employed on land, the senior naval officer present may, if it seems to him expedient, order that they shall, during such employment be subject to military law under this Act, and while such order is in force they shall be subject to military law under this Act accordingly.
- (16.) If any officer or man of the Royal Marines who is borne on the books of any ship commissioned by His Majesty commits an offence for which he is not amenable to a

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s. 179.

naval court-martial, but for which he can be punished under this Act, he may be tried and punished for such offence under this Act :

- (17.) The Admiralty may direct that an officer or man of the Royal Marines may be tried under this Act for any offence committed by him on shore, whether he be or be not amenable to a naval court-martial for such offence, or be or be not borne on the books of any ship commissioned by His Majesty :
- (18.) Where any officer or man of the Royal Marines is on board any ship commissioned by His Majesty, but is borne on the books thereof for service on shore, he shall be subject to the Naval Discipline Act to such extent and under such regulations as His Majesty by Order in Council from time to time directs, and so far as he does not so direct as is for the time being directed by Order in Council with respect to the other regular forces :
- (19.) Any naval prison within the meaning of the Naval Discipline Act shall be deemed to be included in the definition of a public prison for the purposes of this Act, and the Admiralty shall not have any authority to establish any military prison under this Act :
- (20.) In this section the expression "Admiralty" means the Lord High Admiral or the Commissioners for executing the office of the Lord High Admiral for the time being, or any two of them :
- (21.) The expression "man of the Royal Marines" includes a non-commissioned officer of the Royal Marines ; and also a marine raised or enrolled under the Naval Reserve Act, 1900, or the Naval Forces Act, 1903, when called into actual service and when being trained or exercised.

29 & 30 Vict.  
c. 109, as  
amended by  
47 & 48  
Vict. c. 39.

63 & 64 Vict.  
c. 52 ;  
3 Edw. 7, c. 6.

#### NOTE.

As the Admiralty by commission from the Crown exercise the powers of the Crown in relation to the navy, the powers which by this Act are vested in His Majesty in relation to the army are by this section given to the Admiralty.

Paragraph (1). This paragraph prevents an officer of the army from convening a general court-martial for the trial of an officer or man in the marines except under the circumstances here mentioned. The confirmation is provided for by paragraphs (4) and (5).

Paragraphs (3)—(5). These confer on the Admiralty the power of convening and of confirming the findings and sentences of, general courts-martial, and of conferring by warrant on officers the power to convene, and to confirm the findings and sentences of, both general and district courts-martial.

Paragraph (5) provides that, in the absence of any such confirmation by the Admiralty or by an officer holding a warrant from the Admiralty, the finding and sentence of a general or district court-martial on a marine may be confirmed by an officer holding a warrant which enables him to confirm

the findings and sentences of general or district courts-martial, as the case may be, on soldiers of other portions of the regular forces. Part V.

Paragraph (12). The formalities in the enlistment of the marines will be those contained in Part II of this Act (see ss. 80, 81), but the term of enlistment, the conditions of service, transfer, and forfeiture of service, will remain under the Acts relating to the marines, 10 & 11 Vict. c. 63; 20 Vict. c. 1. ss.  
179-180.

Paragraph (15), Proviso (a). This proviso refers to ss. 154 and 156.

Proviso (b). *Employed on land*. This refers to employment for a length of time amounting to an expedition, and does not refer to the mere landing of marines for a temporary purpose.

Paragraph (17). *Offence*. This means an offence punishable under this Act.

Paragraph (21). *And also a marine, &c.* These words were added by the Army (Annual) Act, 1904, in order to make clear the position of marine reservists raised under the Naval Reserve Act, 1900, and marine volunteers enrolled under the Naval Forces Act, 1903.

180. (1.) In the application of this Act to His Majesty's forces when serving in India the following modification shall be made :— Modifica-  
tion of Act  
with respect  
to His  
Majesty's  
Indian  
forces.

A court-martial may take the same proceedings for the punishment of a person not subject to military law who, in any part of India, commits any offence as a witness before a court-martial, or is guilty of a contempt of a court-martial, as might be taken by any civil court in that part of India in the case of the like offence in that court, and any court in which such proceedings are taken shall have jurisdiction to punish such person accordingly.

(2.) In the application of this Act to His Majesty's Indian forces, the following modifications shall be made :—

(a.) Nothing in this Act shall prejudice or affect the Indian military law respecting officers or soldiers or followers in His Majesty's Indian forces, being natives of India; and on the trial of all offences committed by any such native officer, soldier, or follower, reference shall be had to the Indian military law for such native officers, soldiers, or followers, and to the established usages of the service, but courts-martial for such trials may be convened in pursuance of this Act :

(b.) For the purposes of this Act the expression "Indian military law" means the Articles of War or other matters made, enacted, or in force or which may hereafter be made, enacted, or in force under the authority of the Government of India; and such articles or other matters shall extend to such native officers, soldiers, and followers wherever they are serving :

(c.) The Governor-General of India may suspend the proceedings of any court-martial held in India on an officer or soldier belonging to His Majesty's Indian forces :

- Part V. (d.) An officer belonging to His Majesty's Indian forces who  
 s. 180. thinks himself wronged by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, may complain to the officer appointed in that behalf by the Commander-in-Chief of the forces in India, with the approval of the Governor-General, and that officer shall cause his complaint to be inquired into, and thereupon report to the Governor-General in order to receive the further directions of the Governor-General :

[Paragraph (e) has been repealed by the Army (Annual) Act, 1907, s. 7.]

- (f.) The Governor-General of India may reduce any warrant officer not holding an honorary commission to a lower grade of warrant rank, or may remand any such warrant officer to regimental duty in the regimental rank held by him immediately previous to his appointment to be a warrant officer :

- (g.) The provisions of this Act relating to warrant officers not holding honorary commissions shall apply to hospital apprentices in India although not appointed by warrant :

- (h.) Part II of this Act shall not apply to His Majesty's Indian forces, but persons may be enlisted and attested in India for medical service or for other special service in His Majesty's Indian forces for such periods, by such persons, and in such manner as may be from time to time authorised by the Governor-General of India.

(3.) In this Act, so far as regards India, any reference to an indictable offence, or an offence punishable on indictment, shall be deemed to refer to an offence punishable with rigorous imprisonment.

#### NOTE.

Sub-section (1). As an Indian court has not the power which an English court has to punish contempt committed before itself, this sub-section gives the necessary jurisdiction to punish a civilian guilty of contempt of a court-martial.

Sub-section (2). *Natives of India*, see definition in s. 190 (22).

Natives of India are subject to the Indian Articles of War, and the Acts made by the Government of India; but a court-martial on such natives, although it must accord in every respect with a court convened under the Indian military law, may under this sub-section be convened by an officer authorised to convene a court-martial under this Act. On the other hand, Europeans in the Indian forces are subject to the laws and regulations for the government of the British Army. Half-castes and persons born in India, but of certain degrees of European descent, specified in the Indian Articles of War, are, for the purposes of this Act, Europeans. It will be observed that the Indian Articles of War are by this sub-section expressly extended to the natives of India belonging to the Indian forces in whatever part of the world they are serving.

Sub-section (2) (d). See s. 42 and note.

Sub-section (2) (c), (d), and (f) were modified by the Army (Annual) Act, 1895, so as to give effect to the Madras and Bombay Armies Act, 1893. This Act abolished the Madras and Bombay armies as separate commands, and brought all the forces in India under the command of the Commander-in-Chief, to whom were transferred the powers of the Commanders-in-Chief in the two presidencies. The Act of 1893 was explained by the Army (Annual) Act, 1896, which enacted that things which might be done under or in pursuance of s. 1 of the Act of 1893 might be done either within or without the presidencies of Madras and Bombay respectively.

Sub-section (2) (h). Under 23 & 24 Vict. c. 100, it is illegal to enlist European forces for service in India only. This sub-section permits Europeans to be enlisted for medical or other special service in manner from time to time provided by the Governor-General.

It will be recollected that under s. 190 (21), "India" includes the territories in India under the dominion of any native prince or princes as well as the territories the government of which is vested in His Majesty.

181. (1.) The provisions of this Act with respect to enlistment shall not apply to a person enlisted or enrolled in any of His Majesty's auxiliary forces, except so far as such person enlists or enrolls himself, or attempts to enlist or enrol himself, in the regular forces, or in a force raised in India or a Colony, and except so far as the said provisions may be applied by any other Act.

Modification of Act with respect to auxiliary forces.

(2.) The provisions of this Act shall apply to the permanent staff of the auxiliary forces who are not otherwise part of the regular forces, in like manner as if such permanent staff were part of the regular forces.

(3.) The provisions of this Act with respect to billeting and impressment of carriages shall apply to His Majesty's auxiliary forces when subject to military law, in like manner as if they were part of the regular forces, subject to the following modification :

(4.) An order issued and signed as a route or an order signed by the officer commanding the unit of the Territorial Force, the battalion of militia, or the battalion or corps of yeomanry, or volunteers, shall be substituted for a route—

- (a.) In the case of any man of the Territorial Force, or militia-man attending for his preliminary training ; and
- (b.) In the case of any officer, non-commissioned officer, or man of the Territorial Force or militia assembled for training and exercise at the place in the United Kingdom appointed by His Majesty in that behalf ; and
- (c.) In the case of any officer, non-commissioned officer, or man of the Territorial Force or militia embodied under an order of His Majesty, who has joined his corps at the place appointed for his assembling ; and
- (d.) In the case of any officer, non-commissioned officer, or man, of the yeomanry, or volunteers attending at the place at which his corps is required to assemble ;



Part V. and an order to billet such officer, non-commissioned officer, or man,   
 ss. purporting to be signed in manner required by this Act in the case   
 181-182. of a route or by the officer commanding an unit of the Territorial Force, a battalion of militia, or a battalion or corps of yeomanry or volunteers, as the case may be, shall be evidence, until the contrary is proved, of the order being issued in accordance with this Act, and when delivered to an officer, non-commissioned officer, or man, of the Territorial Force, militia, yeomanry, or volunteers, shall be a sufficient authority to such officer, non-commissioned officer, or man, to demand billets, and when produced by an officer, non-commissioned officer, or man, to a constable shall be conclusive evidence to such constable of the authority of the officer, non-commissioned officer, or man, producing the same to demand billets in accordance with the order.

(5.) The competence or liability of an officer of the auxiliary forces to be nominated or elected to, or to hold the office of sheriff, mayor, or alderman, or an office in a municipal corporation, shall not be affected by reason of the battalion or corps to which he belongs being assembled for annual training at the time of such nomination or election, or during the time of his tenure of office.

(6.) When a member of the volunteers or the Territorial Force, being a non-commissioned officer or private, is subject to military law, dismissal may be awarded to him as a punishment, in the event of his committing any offence triable by court-martial or punishable by a commanding officer under this Act.

NOTE.

Sub-section (1). *Except so far as such person enlists.* For the offence of fraudulent enlistment, see s. 13; for that of unauthorised enlistment, see ss. 32, 33, and 99, and ch. XI, para. 53.

*Except so far as the said provisions.* This refers to the application of the procedure for enlistment to the enlistment of militiamen by the Militia Act, 1882 (45 & 46 Vict. c. 49, s. 9), which now applies also to the enlisting of yeomen.

Asto the alterations introduced into this sub-section by the Army (Annual) Act, 1906, see note to s. 13 (1) (a).

Sub-section (3). *Billeting and impressment of carriages.* See Part III of the Act.

Sub-section (5). If a sheriff is an officer of the militia at the time when his corps is embodied, he is discharged from performing personally the office of sheriff, and the under-sheriff is to perform the duty (Militia Act, 1882, s. 40).

The seat of a member of Parliament is not vacated by the acceptance of a commission in the militia, yeomanry, or volunteers; and a person in the militia is not liable to any punishment for absence during the time he is going to vote at any election of a member to serve in Parliament, or during the time he is returning from such election. A person in the militia cannot be compelled to serve as a peace officer, or as a parish officer (Militia Act, 1882, ss. 38-41). These provisions as to persons in the Militia now apply also to persons in the yeomanry.

182. The provisions of this Act shall apply to a warrant officer not holding an honorary commission in like manner as if he were a non-commissioned officer, subject nevertheless (in addition to the



modifications for a non-commissioned officer) to the following Part V.  
modifications :

- ss,  
182-183.
- (1.) He shall not be punished by his commanding officer nor tried by regimental court-martial, nor sentenced by a district court-martial to any punishment not in this section mentioned ; and
  - (2.) He may be sentenced—
    - (a.) by a district court-martial to such forfeitures, fines, and stoppages as are allowed by this Act, and, either in addition to or in substitution for any such punishment, to be dismissed from the service, \* \* \* \* or to be reduced to the bottom or any other place in the list of the rank which he holds, or to be reduced to an inferior class of warrant officer (if any), or to be reduced to a lower grade, or, if he was originally enlisted as a soldier, but not otherwise, to the ranks ; or
    - (b.) by any court-martial having power to try him, other than a district court-martial, to any punishment which, under this section, a district court-martial has power to award, either in addition to or in substitution for any other punishment.
  - (3.) A warrant officer reduced to the ranks, or remanded to regimental duty in the rank of private, shall not be required to serve in the ranks as a soldier ;
  - (4.) The president of a court-martial for the trial of a warrant officer shall in no case be under the rank of captain.

#### NOTE.

*Not holding an honorary commission.* Warrant officers holding honorary commissions are officers within the meaning of the Act ; s. 190 (4), (5). This section makes the Act apply to warrant officers who do not hold such commissions as if they were non-commissioned officers. Consequently, subject to the modifications in this and the next section, the word "soldier" throughout the Act includes a warrant officer not holding an honorary commission. See s. 190 (6). In this and the next section, the commanding officer is the commanding officer as defined by Rule 129. See K.R., para. 456.

Paragraph (2). A district court-martial can only sentence a warrant officer to the punishments mentioned in para. (a) ; but a general or field general court-martial can award any of the punishments so mentioned, either in addition to, or in substitution for, any punishment which they can award under their ordinary powers.

The Army (Annual) Act, 1904, amended 2 (a) in two ways, first, by taking away the power to award suspension from rank and pay and allowances, and secondly, by giving power to reduce a warrant officer to a lower grade, although he was not originally enlisted as a soldier.

**183.** In the application of this Act to a non-commissioned officer, the following modifications shall apply :

- (1.) The obligation on a commanding officer to deal summarily with a soldier charged with drunkenness shall not apply to a non-commissioned officer charged with drunkenness ;

Special provisions as to non-commissioned officer.

Part V.  
s. 183.

- (2.) The Commander-in-Chief, and in India the Commander-in-Chief of the forces in India, or such officer as the Commander-in-Chief of the forces in India with the approval of the Governor-General of India in Council may appoint, and on active service the officer commanding-in-chief in the field and any general officer he may appoint, may reduce any non-commissioned officer to any lower grade or to the ranks :
- (3.) A non-commissioned officer may, by the sentence of a court-martial, be ordered to forfeit seniority of rank or be reduced to any lower grade or to the ranks, either in addition to or without any other punishment, in respect of an offence :
- (4.) A non-commissioned officer sentenced by court-martial to penal servitude, field punishment, imprisonment, or detention, shall be deemed to be reduced to the ranks :

Provided that—

- (a.) An army schoolmaster shall not be liable to be reduced to the ranks (unless he has been transferred from the ranks, in which case he may be reduced to the rank which he held at the date of transfer), but may nevertheless be sentenced by a court-martial to penal servitude, imprisonment, or detention, or to a lower grade of pay, or to be dismissed, and if sentenced to penal servitude, imprisonment, or detention, shall be deemed to be dismissed ; but
- (b.) The Commander-in-Chief, and in India the Commander-in-Chief of the forces in India, or such officer as the Commander-in-Chief of the forces in India with the approval of the Governor-General of India in Council may appoint, may dismiss an army schoolmaster ;
- (c.) A soldier being an acting non-commissioned officer by virtue of his employment either in a superior rank or in an appointment may be ordered by his commanding officer either for an offence or otherwise to revert to his permanent grade as a non-commissioned officer, or, if he has no permanent grade above the ranks, to the ranks.

NOTE.

*Non-commissioned officer.* See definition in s. 190 (5), which includes acting non-commissioned officer.

Paragraph (1). *Obligation.* See s. 46 (3).

Paragraphs (2), (3), and proviso (c). Except in India or on active service a non-commissioned officer can only be reduced by the Commander-in-Chief or by sentence of a court-martial ; but inasmuch as the word " non-commissioned officer " includes acting non-commissioned officer (see s. 190 (5)), it is provided by proviso (c) that a soldier having acting rank only may be ordered by his commanding officer, for an offence or for any other cause, to revert to his permanent grade, or, if he has no permanent grade as non-commissioned officer, to the ranks. As to reduction of non-commissioned officer convicted by the civil power, see K.R., para. 506. As to reduction of a non-commissioned officer removed from an appointment, see K.R., para. 303.

There being now no Commander-in-Chief, paragraph (2) has no effect except in India, or on active service.

When a non-commissioned officer is reduced to the ranks under paragraph (2), the date from which the reduction is to take effect should be specified in the order.

Words were added to paragraph (2) and proviso (b) by the Army (Annual) Act of 1899, so as to give effect to the intention of the Madras and Bombay Armies Act, 1893. See note on sub-section 2 (c) of s. 180.

Paragraph (3) must be read in conjunction with the King's Regulations, paras. 282, 283, defining what are ranks. Acting rank is a matter to be dealt with entirely by the commanding officer, and not being legally a rank under the King's Regulations is not cognisable in the sentence of a court-martial. Therefore a sentence of reduction from or to acting rank, *e.g.*, from or to the rank of lance-serjeant or lance-corporal, is inoperative. But a lance-corporal, being a non-commissioned officer, loses his acting rank under paragraph (4) upon being sentenced to any of the punishments therein mentioned.

*Ordered to forfeit seniority of rank.* See note to s. 41m.

Paragraph (4). Although under this paragraph a non-commissioned officer sentenced to penal servitude, imprisonment, detention, or field punishment, is, *ipso facto*, reduced to the ranks, it is desirable to specify the reduction in the sentence. See Rules of Procedure, Appendix II, p. 577.

Proviso (a). This proviso allows a schoolmaster to be sentenced to penal servitude, imprisonment, or detention, although he cannot be reduced to the ranks unless he has been transferred from the ranks, in which case he may be reduced to the rank which he held at the date of transfer. It does not of course prevent the infliction of any less punishment than detention.

184. In the application of this Act to persons who do not belong to His Majesty's forces, the following modifications shall be made:—

(1.) Where an offence has been committed by any person subject to military law who does not belong to His Majesty's forces, such person may be tried by any description of court-martial other than a regimental court-martial, convened by an officer authorised to convene such description of court-martial, within the limits of whose command the offender may for the time being be, and may be tried and on conviction dealt with and punished accordingly.

(2.) Any person subject to military law who does not belong to His Majesty's forces shall, for the purposes of this Act relating to offences, be deemed to be under the command of the commanding officer of the corps, or portion of a corps (if any), to which he is attached, and if he is not attached to any corps, or portion of a corps, under the command of any officer who may for the time being be named as his commanding officer by the general or other officer commanding the force with which such person may for the time being be, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said general or other officer commanding, but such person shall not be liable to be punished by a commanding officer or by a regimental court-martial.

Provided that a general or other officer commanding shall not place a person under the command of an officer of rank inferior to the official rank of such person if there is present, at the place where such person is, any officer of higher rank under whose command he can be placed.

## Part V.

## NOTE.

—  
ss.  
184-187.

This section provides for the trial by court-martial of a person who does not belong to either the regular or the auxiliary forces, but who is subject to military law under either s. 175 (7) and (8) or s. 176 (10).

Paragraph (2). This paragraph has reference to certain offences, see ss. 7 (4), 14 (2), 15 (3), and also to the investigation by the commanding officer, see ss. 45 and 46; see also s. 49 (field general court-martial), and Rule 129.

*Saving Provisions.*

Special pro-  
vision as to  
prisoners  
and prisons  
in Ireland.

185. All jurisdiction and powers of a Secretary of State under this Act with respect to military convicts or military prisoners, or to prisons other than military prisons, shall in Ireland be vested in the General Prisons Board, and shall be exercised by that Board in the manner and subject to the regulations in and under which the jurisdiction and powers of that Board are exercised under the General Prisons (Ireland) Act, 1877, and the provisions of this Act with respect to the orders and regulations of the Secretary of State shall apply to the orders and regulations of such Board.

40 & 41 Vict.  
c. 49.

Saving of  
Naval Dis-  
cipline Act,  
as to forces  
when on  
board His  
Majesty's  
ships.

186. Nothing in this Act shall affect the application of the Naval Discipline Act, or any Order in Council made thereunder, to any of His Majesty's forces when embarked on board any ship commissioned by His Majesty, and the auxiliary forces shall be deemed to be part of His Majesty's forces within the meaning of that Act.

## NOTE.

The provision of the Naval Discipline Act here referred to is s. 88, and is as follows:—

“Her Majesty's land forces when embarked on board any of Her Majesty's ships shall be subject to the provisions of this Act to such extent “and under such regulations as Her Majesty, by any Order or Orders in “Council, shall at any time or times direct.”

As to Order in Council, see p. 605.

*Definitions.*

Application  
of Act to  
Channel  
Islands and  
Isle of Man.

187. This Act shall apply to the Channel Islands and the Isle of Man in like manner as if they were part of the United Kingdom, subject to the following modifications :

- (1.) The provisions of this Act relating to billeting and the impressment of carriages shall not extend to the Channel Islands and the Isle of Man :
- (2.) For the purposes of the provisions of this Act relating to the execution of sentences of penal servitude, imprisonment, or detention and to prisons and detention barracks, the Channel Islands and the Isle of Man shall be deemed to be colonies, and any sentence of penal servitude, imprisonment, or detention passed in any of those islands shall be deemed to have been passed in a colony :
- (3.) For the purposes of the provisions of this Act relating to the auxiliary forces the Channel Islands shall be deemed to be colonies :

- (4.) For the purposes of the provisions of this Act relating to the militia the Isle of Man shall be deemed to be a colony.

Part V.

ss.

187-189.

## NOTE.

Paragraph (2). The effect of this provision is to require soldiers sentenced to penal servitude, imprisonment, or detention in the Channel Islands or Isle of Man to be brought to the United Kingdom under the same circumstances as when they are sentenced in a colony. See section 131 (2).

Paragraph (4). The volunteers in the Isle of Man are subject to the same law as the volunteers in Great Britain. See s. 50 of the Volunteer Act, 1863 (26 & 27 Vict. c. 65).

188. Where a person subject to military law is on board a ship, this Act shall apply until he arrives at the port of disembarkation in like manner as if he and the officers in command of him were on land at the place at which he embarked on board the said ship, subject to this proviso, that, if he is tried and sentenced while so on board ship, any finding and sentence, so far as not confirmed and executed on board ship, may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

Application of Act to ships.

## NOTE.

This section provides for the trial of military offenders on board ship, or for offences committed on board ship. Under it the soldier will carry with him on board ship the military law to which he was subject at the time when he embarked. Consequently an officer holding a warrant to convene courts-martial at the place of such embarkation would be able to convene a court-martial on board ship. On the other hand, if a man is tried on board ship, the sentence can be confirmed and executed at the place of disembarkation, by the officer who would have had authority to confirm it if the court-martial had been convened and the trial held at that place.

As to troops *en route* for the seat of war, see note to s. 189.

As to troops embarked on board His Majesty's ships, see s. 186 and note.

189. (1.) In this Act, if not inconsistent with the context, the expression "on active service" as applied to a person subject to military law means whenever he is attached to or forms part of a force which is engaged in operations against the enemy, or is engaged in military operations in a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country.

Interpretation of term "on active service."

(2.) Where the governor of a colony in which any of His Majesty's forces are serving, or if the forces are serving out of His Majesty's dominions, the general officer commanding such forces, declares at any time or times that, by reason of the imminence of active service, or of the recent existence of active service, it is necessary for the public service that the forces in the colony or under his command, as the case may be, should be temporarily subject to this Act, as if they were on active service, then, on the publication in general orders of any such declaration, the forces to which the declaration applies shall be deemed to be on active service for the period mentioned in the declaration, so that



Part V. the period mentioned in any one declaration do not exceed three months from the date thereof.

<sup>ss.</sup>  
189-190. (3.) If at any time during the said period the governor or general officer for the time being is of opinion that the necessity continues he may from time to time renew such declaration for another period not exceeding three months, and such renewal shall be published and have effect as the original declaration, and if he is of opinion that the said necessity has ceased, he shall state such opinion, and on the publication in general orders of such statement, the forces to which the declaration applies shall cease to be deemed to be on active service.

(4.) Every such declaration, renewal of declaration, and statement by the governor of a colony shall be made by proclamation published in the official gazette of the colony, and it shall be the duty of every governor or general officer making a declaration or renewal of a declaration under this section, if he has the means of direct telegraphic communication with a Secretary of State, to obtain the previous consent of the Secretary of State to such declaration or renewal, and in any other case to report the same with the utmost practicable speed to the Secretary of State.

(5.) The Secretary of State may, if he thinks fit, annul a declaration or renewal purporting to be made in pursuance of this section, without prejudice to anything done by virtue thereof before the date at which the annulment takes effect, and until that date any such declaration or renewal shall be deemed to have been duly made in accordance with this section, and shall have full effect.

#### NOTE.

It will be observed that the power given by this section to anticipate, or prolong, as it were, the period of active service is given to the Governor in a colony, and to the General when out of the King's dominions. The declaration of the Governor must be by proclamation in the official gazette, but it does not take effect as regards the forces until the declaration has been published in general orders. On such publication the troops will be deemed to be on active service, although active service, as defined by the Act, has not actually begun or has ended.

For definition of colony, see s. 190 (23).

Sub-section (1). Even before embarkation troops under orders to proceed to the seat of war are attached to, or form part of, a force which is engaged in operations against the enemy, and therefore, under s. 188, can, when on board a transport en route for the seat of war, be considered as on active service.

190. In this Act, if not inconsistent with the context, the following expressions have the meanings hereinafter respectively assigned to them; that is to say,

(1.) The expression "Secretary of State" means one of His Majesty's Principal Secretaries of State;

(2.) The expression "Lord Lieutenant of Ireland" includes the lords justices or other chief governor or governors of Ireland;



- (3.) The expression "Commander-in-Chief" means the field-marshal or other officer commanding in chief His Majesty's forces for the time being :
- (4.) The expression "officer" means an officer commissioned or in pay as an officer in His Majesty's forces, or any arm, branch, or part thereof ; it also includes a person who, by virtue of his commission, is appointed to any department or corps of His Majesty's forces, or of any arm, branch, or part thereof ; it also includes a person, whether retired or not, who, by virtue of his commission or otherwise, is legally entitled to the style and rank of an officer of His Majesty's said forces, or of any arm, branch, or part thereof : Warrant and other officers holding honorary commissions are officers within the meaning of this Act, subject to the exceptions in this Act mentioned :
- (5.) The expression "non-commissioned officer" includes an acting non-commissioned officer, and includes an army schoolmaster when not a warrant officer, but save as is in this Act mentioned does not include a warrant officer not holding an honorary commission :
- (6.) The expression "soldier" does not include an officer as defined by this Act, but, with the modifications in this Act contained in relation to warrant officers and non-commissioned officers, does include a warrant officer not having an honorary commission and a non-commissioned officer, and every person subject to military law during the time that he is so subject :
- (7.) The expression "superior officer" when used in relation to a soldier, includes a warrant officer not holding an honorary commission, and also includes a non-commissioned officer as above defined :
- (8.) The expressions "regular forces" and "His Majesty's regular forces" mean officers and soldiers who by their commission, terms of enlistment, or otherwise, are liable to render continuously for a term military service to His Majesty in any part of the world, including, subject to the modifications in this Act mentioned, the Royal Marines and His Majesty's Indian forces, and the Royal Malta Artillery, and subject to this qualification that when the reserve forces are subject to military law such forces become during the period of their being so subject part of the regular forces :

The expression "reserve forces" means the army reserve force and the militia reserve force :

\* \* \* \* \*

[Paragraphs (10) and (11) were repealed by the Reserve Forces Act, 1882 (45 & 46 Vict. c. 48), and that Act enacted (s. 28) that in the Army Act

Part V. the expressions "army reserve force" and "militia reserve force" should  
 — respectively mean the army reserve and militia reserve under the Reserve  
 s. 190. Forces Act, 1882.]

(12.) The expression "auxiliary forces" means the territorial  
 force, the militia, the yeomanry, and the volunteers :

13.) The expression "militia" includes the general and the local  
 militia :

(14.) The expression "volunteers and volunteer forces" includes  
 the Honourable Artillery Company of London :

(15.) The expression "corps"—

(A) In the case of His Majesty's regular forces—

(i.) Means any such military body, whether known as a  
 territorial regiment or by any different name, as may  
 be from time to time declared by Royal Warrant to be  
 a corps for the purpose of this Act, and is a body  
 formed by His Majesty, and either consisting of  
 associated battalions of the regular and auxiliary  
 forces, or consisting wholly of a battalion or battalions  
 of the regular forces, and in either case with or  
 without the whole or any part of the permanent staff  
 of any of the auxiliary forces not included in such  
 military body ; and

(ii.) Means the Royal Marine forces, in this Act referred  
 to as the Royal Marines ; and also

(iii.) Means any portion of His Majesty's regular forces, by  
 whatever name called, which is declared by Royal  
 Warrant to be a corps for the purposes of this Act ;  
 and also

(iv.) Means any other portion of His Majesty's regular  
 forces employed on any service and not attached to  
 any corps as above defined ;

(v.) And any reference in Part II of this Act to a corps of  
 the regular forces shall be deemed to refer to any such  
 military body as is hereinbefore defined to form a  
 corps ; and

(B) In the case of His Majesty's auxiliary forces—

(i.) Means any such military body, whether known as a  
 territorial regiment or by any different name, as may be  
 from time to time declared by Royal Warrant to be a  
 corps for the purposes of this Act, and is a body formed  
 by His Majesty, and either consisting of associated bat-  
 talions of the regular and auxiliary forces, or consisting  
 wholly of a battalion or battalions of the auxiliary  
 forces, and either inclusive or exclusive of the whole  
 or any part of the permanent staff of any part of the  
 auxiliary forces ; and

(ii.) Means any other portion of His Majesty's auxiliary

forces employed in any service, and not attached to any corps as above defined :

- (16.) The expression "battalion," in the application of this Act to cavalry, artillery, or engineers, shall be construed to mean regiment, brigade, or other body into which His Majesty may have been pleased to divide such cavalry, artillery, or engineers :
- (17.) The expression "regimental" means connected with a corps, or with any battalion or other sub-division of a corps :
- (18.) The expression "military decoration" means any medal, clasp, good-conduct badge, or decoration :
- (19.) The expression "military reward" means any gratuity or annuity for long service or good conduct ; it also includes any good conduct pay or pension and any other military pecuniary reward :
- (20.) The expression "enemy" includes all armed mutineers, armed rebels, armed rioters, and pirates :
- (21.) The expression "India" means British India, together with any territories of any native prince or chief under the suzerainty of His Majesty exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India ; and the expression "British India" means all territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India :
- (22.) The expression "native of India" means a person triable and punishable under Indian military law as defined by this Act :
- (23.) The expression "colony" means any part of His Majesty's dominions exclusive of the British Islands and of British India, and includes Cyprus and any British protectorate, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony :
- (24.) The expression "foreign country" means any place which is not situate in the United Kingdom, a colony, or India, as above defined, and is not on the high seas :
- (25.) The expression "beyond the seas" means out of the United Kingdom, the Channel Islands, and Isle of Man ; and the expression "station beyond the seas" includes any place where any of His Majesty's forces are serving out of the United Kingdom, the Channel Islands, and Isle of Man :
- (26.) The expression "governor-general" in its application to India means the Governor-General of India in Council :

Part V.  
s. 190.

- (27.) The expression "governor" as respects the presidency of Bengal means the Governor-General of India in Council, and as respects the presidencies of Madras and Bombay means the Governor in Council of the presidency, and in its application to a colony includes the lieutenant-governor or other officer administering the government of the colony :
- (28.) The expressions "oath" and "swear," and other expressions relating thereto, include affirmation or declaration, affirm or declare, and expressions relating thereto, in cases where an affirmation or declaration is by law allowed instead of an oath :
- (29.) The expression "superior court" in the United Kingdom means His Majesty's High Court of Justice in England, the Court of Session in Scotland, and His Majesty's High Court of Justice at Dublin :
- (30.) The expression "supreme court" means, as regards India, any high court or any chief court ; and the expression "court of superior jurisdiction," as regards a colony, means a court exercising in that colony the like authority as the High Court of Justice in England :
- (31.) The expression "civil court" means, with respect to any crime or offence, a court of ordinary criminal jurisdiction, and includes a court of summary jurisdiction :
- (32.) The expression "prescribed" means prescribed by any rules of procedure made in pursuance of this Act :
- (33.) The expression "misdemeanor," as far as regards Scotland, means a crime or offence, and so far as regards India means a crime punishable by fine and rigorous or simple imprisonment at the discretion of the court :

'Summary  
Jurisdiction  
Acts,"  
42 & 43 Vict.  
c. 49.

27 & 28 Vict.  
c. 53.

- (34.) The expression "Summary Jurisdiction Acts"—
- (a.) As regards England has the same meaning as in the Summary Jurisdiction Act, 1879 :
- (b.) As regards Scotland means the Summary Procedure Act, 1864, and any Acts amending the same ; and
- (c.) As regards Ireland, means within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district ; and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act amending the same :

14 & 15 Vict.  
c. 83.

"Court of  
summary  
jurisdic-  
tion."

- (35.) The expression "court of summary jurisdiction"—
- (a.) As regards England has the same meaning as in the Summary Jurisdiction Act, 1879 ; and
- (b.) As regards Ireland, means any justice or justices of the peace, police magistrate, stipendiary or other magistrate, or officer by whatever name called, to whom jurisdiction is

given by the Summary Jurisdiction Acts or any Acts therein referred to ; and Part V.  
s. 190.

(c.) As regards Scotland, means the sheriff or sheriff substitute, or any two justices of the peace sitting in open court, or any magistrate or magistrates to whom jurisdiction is given by the Summary Procedure (Scotland) Act, 1864; and 27 & 28 Vict.  
c. 53.

(d.) As regards India, a colony, the Channel Islands, and Isle of Man, means the court, justices, or magistrates who exercise jurisdiction in the like cases to those in which the Summary Jurisdiction Acts are applicable :

(36.) The expression "court of law" includes a court of summary jurisdiction :

(37.) The expression "county court judge" includes—

(a.) In the case of Scotland, the sheriff or sheriff substitute ; and

(b.) In the case of Ireland, the judge of the Civil Bill Court :

(38.) The expression "constable" includes a high constable and a commissioner, inspector, or other officer of police :

(39.) The expression "police authority" means the commissioner, commissioners, justices, watch committee, or other authority having the control of a police force :

(40.) The expression "horse" includes a mule, and the provisions of this Act shall apply to any beast of whatever description used for burden or draught, or for carrying persons, in like manner as if such beast were included in the expression "horse."

#### NOTE.

(4.) *Officer.* This includes half-pay and every other description of officer, though not subject to military law under s. 175.

(6.) *Soldier.* This expression practically includes all persons subject to military law other than officers.

*Modifications.* See ss. 182, 183.

(8.) *Regular Forces.* This definition includes the marines. The distinction between the regular and other forces is that, as a rule, the regular forces are liable to serve continuously in any part of the world.

(15.) *Corps.* As the corps is the unit for the purposes of enlistment and some other purposes under the Act, a power is given to His Majesty by warrant to declare any portion of the forces to be a corps for the purposes of the Act, but even in cases where a warrant has not been issued, a portion of the regular or auxiliary forces employed on any service, and not attached to any corps as defined by the Act or such warrant, becomes a corps for the purposes of the Act. See the Warrant now in force (of the 9th April, 1904), and ch. XI, paras. 4-6.

(21.) *India.* It will be observed that "India," for the purposes of the Act, includes the dominions of Indian native princes as well as "British India"—that is to say, all territories and places in H.M.'s dominions governed through the Governor-General of India.



Part V. (23.) *Colony.* India is not treated as a colony for the purposes of the Act.

s. 190.

The reference to a central legislature refers to such a case as Canada, where the Dominion parliament assembled at Ottawa is the central legislature, and the provincial parliaments for the provinces of Quebec, Ontario, &c., are local legislatures. Under the definition, the whole of Canada being under one central legislature will be one colony, and the provinces of Quebec, Ontario, &c., will be parts of that colony, and not separate colonies, for the purposes of the Act. Similarly the whole of the Commonwealth of Australia (see 63 & 64 Vict. c. 12) will now be one colony, and Victoria, New South Wales &c., will no longer be separate colonies for the purposes of the Act.

The Army (Annual) Act, 1904, has extended the meaning of the term "colony" to include a British Protectorate, and forces raised in a British protectorate will thus be subject to the provisions contained in s. 177 of the Act. See also s. 95 (2).

(24.) *Foreign country.* This includes the whole world, with the exception of the United Kingdom, India, and the colonies as above defined.

(25.) *Beyond the seas.* It will be observed that the Channel Islands and the Isle of Man, though for certain purposes treated as colonies (see s. 187), are treated as not being beyond the seas.

(85.) *Court of Summary Jurisdiction.* The expression "summary conviction" is not defined by the Act, but means a conviction by a court of summary jurisdiction as defined by this section, and does not refer to the summary award of punishment by a commanding officer or to any other military proceeding.

By virtue of the definition in the Interpretation Act, 1889 (52 & 53 Vict. c. 63), a "court of summary jurisdiction" means, in England, a police or stipendiary magistrate, and also any justice of the peace, including a mayor, who is *ex officio* a justice; but for hearing a case the court must consist of two justices, or of one police or stipendiary magistrate.

The expression "authorised prison" is not defined by this section, but is defined, as regards military convicts, by s. 62, and as regards military prisoners, by s. 65.

It may be observed that under the Interpretation Act, 1889, in the construction of every Act of Parliament, masculine words include the feminine, the plural includes the singular, and the singular includes the plural; the word "month" means a calendar month, and "oath," "affidavit," and "swear," include affirmation, declaration, and affirm or declare. This enactment, however, does not apply to documents not Acts of Parliament, and therefore in any such document, *e.g.*, a warrant, "oath" will not include affirmation, &c., but under Rule 134 (c) "month" in a sentence of imprisonment, detention, or field punishment, means, unless the contrary is expressed, a calendar month.

Throughout the Act a year means twelve calendar months<sup>1</sup> and may be held to commence on any day in any month.



## PART VI.

COMMENCEMENT AND APPLICATION OF ACT AND  
REPEAL.

Part VI (ss. 191-193) and the Fifth Schedule were repealed by the Statute Law Revision (No. (2) ) Act, 1893 (56 & 57 Vict.c. 54).

## FIRST SCHEDULE.

s. 96.

*Form of Oath to be taken by a Master whose Apprentice has absconded, and of Justice's Certificate annexed.*

I, *A.B.*, of \_\_\_\_\_ do make oath, that I am by trade a \_\_\_\_\_, and that \_\_\_\_\_ was bound to serve as an apprentice to me in the said trade, by indenture dated the \_\_\_\_\_ day of \_\_\_\_\_ for the term of \_\_\_\_\_ years; and that the said \_\_\_\_\_ did on or about the \_\_\_\_\_ day of \_\_\_\_\_ abscond and quit my service without my consent; and that to the best of my knowledge and belief the said \_\_\_\_\_ is aged about \_\_\_\_\_ years. Witness my hand at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

(Signed) *A.B.*

I hereby certify that the foregoing affidavit }  
was sworn before me at \_\_\_\_\_, }  
this \_\_\_\_\_ day of \_\_\_\_\_ } (Signed) *C.D.*,  
\_\_\_\_\_, 19 . } Justice of the Peace  
for \_\_\_\_\_.

*Form of Oath to be taken by a Master whose Indentured Labourer in India or a Colony has absconded, and of Justice's Certificate annexed.*

I, \_\_\_\_\_, of \_\_\_\_\_, do make oath that \_\_\_\_\_ was bound to me to serve as an indentured labourer by indenture dated the \_\_\_\_\_ day of \_\_\_\_\_ for the term of \_\_\_\_\_ years, and that the said \_\_\_\_\_ did on or about the \_\_\_\_\_ day of \_\_\_\_\_ abscond and quit my service without my consent. Witness my hand at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

(Signed) *A.B.*

I hereby certify, &c. [*as for apprentice*].

## SECOND SCHEDULE.

ss.  
106-108.

## BILLETING.

## PART I.

*Accommodation to be furnished by Keeper of Victualling House.*

A keeper of a victualling house on whom any officer, soldier, or horse is billeted—

- (1.) Shall furnish the officer and soldier with lodging and attendance; and
- \* (2.) Shall, if required by the soldier, furnish him for every day of the march and for not more than two days, if the soldier is halted at an intermediate place on the march for more than two days, and on the day of arrival at the place of final destination, with breakfast, hot dinner, and supper on each day, such meals to consist of such quantities of food and drink as may from time to time be fixed by His Majesty's Regulations, not exceeding—
  - (a) For breakfast, six ounces of bread, one pint of tea with milk and sugar, four ounces of bacon;
  - (b) For hot dinner, one pound of meat previous to being dressed, eight ounces of bread, eight ounces of potatoes or other vegetables, one pint of beer or mineral water of equal value;
  - (c) For supper, six ounces of bread, one pint of tea with milk and sugar, two ounces of cheese; and
- \* (3.) When the soldier is not so entitled to be furnished with a meal, shall furnish the soldier with candles, vinegar, and salt, and allow him the use of fire, and the necessary utensils for dressing, and eating his meat; and
- (4.) Shall furnish stable room and ten pounds of oats, twelve pounds of hay, and eight pounds of straw on every day for each horse.

† For the purposes of this Part of this Schedule the expression "furnish with lodging" shall include the provision of a separate bed for each officer and soldier.

## PART II.

*Regulations as to Billets.*

(1.) When the troops are on the march the billets given shall, except in case of necessity or of an order of a justice of the peace, be upon victualling houses in or within one mile from the place mentioned in the route (a):

(2.) Care shall always be taken that the billets be made out to the less distant victualling houses in which suitable accommodation can be found before billets are made out for the more distant victualling houses;

(3.) Except in case of necessity, where horses are billeted, each man and his horse shall be billeted on the same victualling house:

\* This provision was amended by the Army (Annual) Act, 1907.

† This provision was added by the Army (Annual) Act, 1904.

(4.) Except in case of necessity, one soldier at least shall be billeted where there are one or two horses, and two soldiers at least where there are four horses, and so in proportion for a greater number :

(5.) Except in case of necessity, a soldier and his horse shall not be billeted at a greater distance from each other than one hundred yards :

(6.) When any soldiers with their horses are billeted upon the keeper of a victualling house who has no stables, on the written requisition of the commanding officer present the constable shall billet the soldiers and their horses, or the horses only, on the keeper of some other victualling house who has stables, and a court of summary jurisdiction upon complaint by the keeper of the last-mentioned victualling house may order a proper allowance to be paid to him by the keeper of the victualling house relieved :

(7.) An officer demanding billets may allot the billets among the soldiers under his command and their horses as he thinks most expedient for the public service, and may from time to time vary such allotment :

(8.) The commanding officer may, where it is practicable, require that not less than two men shall be billeted in one house.

### THIRD SCHEDULE.

s. 113.

#### IMPRESSMENT OF CARRIAGES.

##### *Table of Rates of Payment for Carriages and Animals.*

Carriages and Animals.	Rate per Mile.
<i>In Great Britain.</i>	
A waggon with four or more horses, or a wain with six oxen, or four oxen and two horses.	One shilling.
A waggon with narrow wheels, or a cart with four horses, carrying not less than fifteen hundredweight.	Ninepence.
Any other cart or carriage, with less than four horses, and not carrying fifteen hundredweight.	Sixpence.
<i>In Ireland.</i>	
For every hundredweight loaded on any wheeled vehicle.	One halfpenny.

The milage when reckoned for the purposes of payment shall include the distance from home to the place of starting and the distance home from the place of discharge.

#### *Regulations as to Carriages and Animals.*

(1.) Where the whole distance for which a carriage is furnished is under one mile the payment shall be for a full mile.

(2.) In Ireland, the minimum sum payable for a car shall be threepence, and for a dray, sixpence per mile.

(3.) In Great Britain, when the day's march exceeds fifteen miles, the justice granting his warrant may fix a further reasonable compensation for every mile travelled, not exceeding, in respect of each mile, the rate of hire authorised to be charged by this Act; when any such additional compensation is granted, the justice shall insert in his own hand in the warrant the amount thereof.

(4.) In Ireland the payment shall be at the same rate for each hundredweight in excess of the amount which the carriage is liable under this schedule to carry.

(5.) A carriage shall not be required to travel more than twenty-five miles.

(6.) A carriage shall not, except in case of pressing emergency, be required to travel more than one day's march prescribed in the route.

(7.) In Great Britain a carriage shall not be required to carry more than thirty hundredweight.

(8.) In Ireland a carriage shall not be required to carry, if a car, more than six hundredweight, and if a dray more than twelve hundredweight.

(9.) The load for each carriage shall, if required, at the expense of the owner of the carriage, and if the same can be done within a reasonable time without hindrance to His Majesty's service, be weighed before it is placed in the carriage.

s. 154.

## FOURTH SCHEDULE.

## FORM OF DESCRIPTIVE RETURN.

DESCRIPTIVE RETURN of \_\_\_\_\_ who\* \_\_\_\_\_ at \_\_\_\_\_ on  
 the \_\_\_\_\_ day of \_\_\_\_\_, and was committed to confinement  
 at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ as a deserter [or  
 absentee without leave] from the \_\_\_\_\_ Bn. of the  
 Regiment of \_\_\_\_\_

\* After the word "who," to be inserted either the words "was apprehended," or "surrendered himself," as the case may be.

Age	-	-	-	-	-	-	
Height	-	-	-	-	-	-	Feet. Inches.
Complexion	-	-	-	-	-	-	
Hair	-	-	-	-	-	-	
Eyes	-	-	-	-	-	-	
Marks	-	-	-	-	-	-	
In uniform or plain clothes	-	-	-	-	-	-	
Probable date and place of attestation	-	-	-	-	-	-	
Probable date of desertion or beginning of absence, and from what place	-	-	-	-	-	-	

Name, occupation, and address of the person by whom or through whose means the deserter [or absentee without leave] was apprehended and secured.\*

Particulars in the evidence on which the prisoner is committed, and showing whether he surrendered or was apprehended, and in what manner and upon what grounds. The fullest possible details to be given.

I do hereby certify that the prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he†

the before-mentioned corps, and I recommend‡ for a reward of s.

\_\_\_\_\_ Signature } of committing  
 \_\_\_\_\_ Residence } magistrate.  
 \_\_\_\_\_ Post Town }  
 \_\_\_\_\_ Signature of prisoner.  
 \_\_\_\_\_ Signature of informant.

Or where the prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming:

I hereby certify that the above-named prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the day of for the purpose of obtaining such evidence from a Secretary of State.

\_\_\_\_\_ Signature.  
 \_\_\_\_\_ Residence.  
 \_\_\_\_\_ Post Town.

\* It is important for the public service, and for the interest of the deserter or absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the justice in his own handwriting or, under his direction, by his clerk.

† Insert *is* or *is not a deserter or absentee without leave from or belongs or does not belong to*, as the case may be.

‡ The justice will insert the name of the person to whom the reward is due, and the amount [5s., 10s., 15s., or 20s.] which, in his opinion, should be granted in this particular case.

## FIFTH SCHEDULE.

### ACTS REPEALED.

[Rep. Stat. Law Rev. (No. (2) ) Act, 1893.]

# RULES OF PROCEDURE, 1907.

## PART I.—ARREST AND TRIAL.

### *Arrest.*

1. Report of delay of trial under Army Act, s. 45.

### *Power of Commanding Officer.*

2. Duty of commanding officer as to investigation of charge for offence.
3. Hearing of charge.
4. Disposal of the charge or adjournment for taking down the summary of evidence.
5. Remand of accused.
6. Summary award of punishment by commanding officer.
7. Right of trial by court-martial in lieu of summary award.
8. Procedure on charge against officer.

### *Framing Charges.*

9. Charge-sheet and charge.
10. Commencement of charge-sheet.
11. Contents of charge.
12. Validity of charge-sheet.

### *Preparation of Defence by Accused.*

13. Opportunity for accused to prepare defence.
14. Information of charge and delivery of summary of evidence and list of officers to accused.
15. Joint trial of accused persons.

### *Convening of Court-Martial.*

16. Convening of regimental court-martial.
17. Procedure of officer on convening court-martial.
18. Adjournment for insufficient number of officers.
19. Ineligibility and disqualification of officers for court-martial.
20. Corps of members of court-martial.
21. Rank of members of court-martial in certain cases.

### *Procedure at Trial.—Constitution of Court.*

22. Inquiry by court as to legal constitution.
23. Inquiry by court as to amenability of accused and validity of charge.

### *Procedure at Trial.—Challenge and Swearing.*

24. Appearance of prosecutor and accused.
25. Proceedings for challenge of members of court.
26. Swearing of members.
27. Swearing of judge-advocate and other officers.
28. Substitution of solemn declaration for oath.
29. Form of oath in case of trial of several accused persons.
30. Swearing of person according to the form of his religion.



*Prosecution, Defence, and Summing Up.*

31. Arraignment of accused.
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35. General plea of "Guilty" or "Not Guilty."
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39. Plea of "Not Guilty" and case for the prosecution.
40. Procedure where no witness to facts (except accused) called.
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43. Consideration of finding.
44. Form and record of finding.
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47. Mode of forfeiting seniority of rank of officer or non-commissioned officer.
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52. Revision.
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54. Mitigation of sentence on partial confirmation.
55. Confirmation of finding on alternative charges.
56. Confirmation notwithstanding informality in or excess of punishment.

*Insanity.*

57. Provisions as to finding of insanity and custody of insane person.

*General Provisions as to Proceedings of Court.*

58. Seating of members.
59. Responsibility of president.
60. Power of court over address of prosecutor and accused.
61. Procedure on trial of accused persons together.
62. Separate charge-sheets.
63. Sitting in closed court.
64. Time for trial.
65. Continuity of trial and adjournment of court.
66. Suspension of trial.
67. Proceeding on death or illness of accused.
68. Presence throughout of all members of court.
69. Taking of opinions of members of court.
70. Procedure on incidental question.
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- 92. General rules as to counsel.
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- 97. Transmission of proceedings after finding.
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- 130. Committal and removal of soldiers under sentence in one colony to authorised prisons or detention barracks in other colonies.
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FIRST APPENDIX.

*Forms of Charges.*

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SECOND APPENDIX.

*Forms as to Courts-Martial.*

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THIRD APPENDIX.

*Forms of Commitment.*

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RULES FOR FIELD PUNISHMENT.

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## RULES OF PROCEDURE, 1907.

### PART I.—ARREST AND TRIAL.

#### *Arrest.*

1. The special report of the necessity for further delay in ordering a court-martial to assemble for the trial of an officer or soldier required under section 45 of the Army Act, shall be made by means of a letter from the commanding officer of that officer or soldier reporting the necessity to the general or other officer to whom application would be made to convene a court-martial for the trial of that officer or soldier.<sup>1</sup>

*Report of delay of trial under Army Act, s. 45.*

1. See generally as to r.r. 1-8, Ch. IV, and K.R., 468, *et seq.*

This rule prescribes the manner in which the special report required by A.A. 45 is to be made. A similar report must be furnished weekly until the accused is released or a court-martial assembled; and on the receipt of every such report, the general or other officer to whom it is sent must satisfy himself as to the necessity for the continued retention of the accused in custody; K.R., 464. This special report is not required on active service.

#### *Power of Commanding Officer.*

2. Every commanding officer<sup>1</sup> will take care that a person<sup>2</sup> under his command, when charged with an offence, is not detained in custody for more than forty-eight hours after the committal of that person into custody is reported to him, without the charge being investigated<sup>3</sup>, unless investigation within that period seems to him impracticable with due regard to the public service. Every case of a person being detained in custody beyond a period of forty-eight hours, and the reason thereof, shall be reported<sup>4</sup> by the commanding officer to the general or other officer to whom application would be made to convene a court-martial for the trial of the person charged.

*Duty of commanding officer as to investigation of charge for offence.*

1. See r. 129 and note.—A commanding officer who unnecessarily detains a person in arrest or confinement, exposes himself to a charge under A.A. 21(1).

2. This Rule applies to officers as well as soldiers.

3. See A.A. 45 (5). The rule means that the investigation must be commenced within the time specified, though it may be impossible to complete it within that time. As to exclusion of Sunday, Good Friday, and Christmas Day, see r. 135 (A).

4. The report should be made by letter, and should refer specifically to the case, and state the reasons justifying the detaining of the accused in custody and preventing the investigation. The absence of an important witness would justify a remand; or the accused might be ordered to return to his duty, with a distinct intimation that his case will be investigated so soon as the absent witness can be obtained; K.R., 490.

3. (A) Every charge against a soldier will be heard<sup>1</sup> in the presence of the accused. The accused<sup>2</sup> will have full liberty to cross-examine any witness against him, and to call any witnesses and make any statement<sup>3</sup> in his defence. On the application of the accused, he and his wife may be called as witnesses, subject to the provisions of Rule 80.

*Hearing charge.*

(B) If the accused demands that the evidence against him be taken on oath, the oath will be administered to each witness by

the investigating officer<sup>4</sup> in the same form<sup>5</sup> as provided for a court-martial, or, in the case of a witness allowed before a court-martial to make a solemn declaration<sup>6</sup>, the like solemn declaration will be made before the investigating officer.

1. As to the mode of conducting the investigation, see Ch. IV, paras. 18-28; and K.R., 483-491. The Army Act and Rules do not require the investigation to be by the commanding officer, but do make him responsible for the decision; A.A. 46 (1). The evidence is not taken in writing, and, therefore, in the case of a remand, must be taken in writing afterwards as directed by r. 4.

2. The accused may on his own application give evidence himself or call his wife as a witness (see r. 80, which will apply to the evidence of the accused and his wife at this and every other stage of the proceedings). The accused's evidence will or will not be on oath, according as the evidence of the other witnesses is or is not on oath.

3. The right of the accused to make a statement will not be prejudiced by the fact that he has given or intends to give evidence himself, whether on oath or not.

4. This applies to all cases with which the O.O. has power to deal summarily.

5. See r. 82.

6. See A.A. 52 (4), and r. 82 (D).

Disposal of the charge or adjournment for taking down the summary of evidence.

4. (A) The commanding officer will dismiss a charge brought before him if in his opinion the evidence does not show that some offence under the Army Act<sup>1</sup> has been committed, or if, in his discretion, he thinks the charge ought not to be proceeded with<sup>2</sup>.

(B)<sup>3</sup> At the conclusion of the hearing of a charge, if the commanding officer is of opinion that the charge ought to be proceeded with, he shall, without unnecessary delay<sup>4</sup>, either—

- (1) dispose of the case summarily; or
- (2) refer the case to the proper superior military authority<sup>5</sup>; or
- (3) adjourn the case for the purpose of having the evidence reduced to writing.

Provided that the commanding officer shall not dispose of a case summarily unless the accused is a soldier, or if the accused, being a soldier, has elected (under Section 46 of the Army Act) to be tried by a district court-martial.

(c)<sup>6</sup> Where the case is so adjourned, at the adjourned hearing the evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, shall be taken down in writing<sup>7</sup> in the presence of the accused before the commanding officer or such officer as he directs.

(d)<sup>8</sup> The accused may put questions in cross-examination to any witness, and the questions with the answers shall be added in writing to the evidence taken down.

(e)<sup>9</sup> The evidence of each witness when taken down, as provided in (c) and (d), shall be read over to him, and shall be signed by him, or, if he cannot write his name, shall be attested by his mark and witnessed. Any statement<sup>8</sup> of the accused material to his defence shall be added in writing.

1. Every offence which a person subject to military law can commit is an offence against the Army Act, because it is either a military offence or a civil offence. If it is a civil offence, it is provided for by s. 41; if it is a military offence, it is either particularly specified in the Act, or is an act to the prejudice of good order and military discipline under s. 40. Where the act done is not a civil offence, and is not specified in the Act, the commanding officer must consider whether it is or not to the prejudice of good order and military discipline, as, if not, the charge must be dismissed. He must also consider whether, having regard to the limitations of time prescribed by A.A. 158 (1), 161, the accused is liable to be proceeded against; see K.R., 483.



2. If the commanding officer is of this opinion, on account either of the evidence being doubtful, or of the triviality of the case, or of the good character of the accused, or of a doubt whether the act done is to the prejudice of good order and military discipline, or as a matter of discretion, for any reason, he must dismiss the case; A.A. 46; K.R., 488. To make an entry against the man without punishment is not dismissal of the case. The case must also be dismissed if the man has been previously acquitted or convicted of the offence by his commanding officer, or by any court, military or civil; A.A. 46 (7), 157, 162 (6). No particular time is fixed within which a commanding officer must dispose of a case, so that he can always carefully consider a difficult case; but as a rule he should decide immediately, and should never delay for more than a day, unless further evidence is required.

3. Of the three alternative courses specified in this paragraph a commanding officer—

will adopt the first alternative (subject in the case of a non-commissioned officer to the provisions of K.R. 493 (vi) and (vii) and 499), unless (a) he thinks the case is one for trial by court-martial, or (b) the accused elects to be tried by district court-martial, or (c) the case is one which under K.R. 487 he is required to refer to superior military authority. Certain cases of drunkenness he is *bound* to deal with summarily; A.A. 46 (8);

will adopt the second alternative where the case is one which he thinks should be disposed of summarily, but which cannot be so dealt with under K.R. 487 without reference to superior authority;

In any other case will adopt the third alternative.

The final decision of the commanding officer as to whether the case should be tried by court-martial is deferred until the evidence has been taken down in writing and considered by him. A summary is to be made whether it is intended to remand the accused for trial by a regimental or by district or general court-martial.

4. As to the course to be followed, where sufficient evidence is not forthcoming at the investigation, or where a second offence is disclosed during the investigation, see K.R. 490, 491. The adjourned hearing for reducing the evidence to writing should, if possible, be held the same day as the investigation.

5. See r.r. 134 (A), 135 (B).

6. For power to dispense with paras. (c), (d) and (e), see r. 104.

7. The C.O., on adjourning the case for the purpose of having the evidence reduced to writing, may direct another officer to take down the evidence. But an officer who has given material evidence at the investigation must not be appointed for this purpose. At the adjourned hearing the accused must be allowed to put any reasonable question to a witness, and especially to put questions respecting any variance between the evidence taken down and that given before the C.O., such, e.g., as would arise if the witness's answers in cross-examination before the C.O. were omitted. In reducing the evidence to writing immaterial statements may be omitted, and all hearsay or irrelevant matter should be excluded. If the accused or his wife has given evidence before the C.O. under r. 3, he or she may, on the application of the accused, and subject to the provisions of r. 80, give evidence, to be taken down in writing and inserted in the summary like the evidence of other witnesses under this rule, but neither he nor she can, in the absence of such an application, be compelled to repeat the evidence previously given. If either of them does give evidence under this rule, that evidence may be used in the like manner and for the like purposes as the evidence of other witnesses. Therefore, before the application of the accused is entertained, he should be warned of the use to which the evidence of himself and his wife, as taken down in the summary, may be put.

8. If the accused has made a statement, whether in addition to or in lieu of giving evidence under r. 3, the material parts of his statement are to be added, but it will be advisable usually to take down fully any statement he makes; he cannot be required to sign it. The statement of an accused person can only be given in evidence at the trial if it is voluntary (see Oh. VI, paras. 74 to 81). Before, therefore, an accused person makes any statement, he should be warned that he is not bound to say anything, and that any statement he makes may be used as evidence against him; and, if he is asked for his defence, a similar warning should be given to him; but if the statement was made voluntarily the mere fact that the warning was not given will not prevent the statement being used as evidence. In no case must he be authoritatively called on to account for his proceedings, or required to make any statement, or asked

any questions; the answer to any such question will not be admissible in evidence against him. See also Memoranda for Guidance of Courts-Martial, p. 702 *et. seq.*

Remand of  
accused.

5 (A) The evidence and statement (if any) taken down in writing in pursuance of Rule 4 (in these rules referred to as the summary of evidence) shall be considered by the commanding officer,<sup>1</sup> who thereupon shall either—

- (1) remand the accused for trial by court-martial<sup>2</sup>; or
- (2) refer the case to the proper superior military authority; or
- (3) if he thinks it desirable, and the accused is a soldier and has not himself elected to be tried by a district court-martial, rehear the case and dispose of it summarily.

(B) If the accused is remanded for trial by court-martial, the commanding officer shall without unnecessary delay<sup>3</sup> either issue an order for the assembly of a court-martial, or apply<sup>4</sup> to the proper military authority to convene a court-martial, as the case requires; this delay, and any delay in the reference to superior military authority, should not ordinarily exceed 36 hours<sup>5</sup>.

(C) The summary of evidence<sup>6</sup>, or a true copy thereof, shall be laid before the court-martial before whom the accused is tried on the assembly of the court.

1. The C.O. is to consider the evidence after it has been reduced to writing, and should be careful to note whether or not the evidence taken down in the summary corresponds to that given before him at the investigation. On the evidence being reduced to writing a different aspect may be given to the case; if so, the C.O. may, if the case is within his jurisdiction and the accused has not elected (under A.A. 46 (8)) to be tried by a district court-martial, re-hear the case, and if he thinks fit, dispose of it summarily. The C.O. can dismiss the case on re-hearing it.

2. If the C.O. determines to remand the accused for trial by court-martial, he will have to consider by what class of court-martial the accused should be tried. Usually, if the accused is not dealt with summarily, application should be made for a district court-martial. The application (like the charge-sheet) must be signed by the officer in actual command of the unit to which the accused belongs.

3. The order for a regimental court-martial should as a rule be issued so as to admit of the court assembling next day, care being taken to allow the interval of eighteen hours required by r. 14 (A).

4. For form of application for court-martial see p. 727. See also Memoranda for Guidance of Courts-Martial, p. 702 *et. seq.*

5. As to exclusion of Sunday, &c., in reckoning time, see r. 135 (A).

6. Where the accused is charged with several offences, the evidence in relation to each offence should be kept, so far as possible, distinct. As to the summary of evidence at the trial, see r. 17 (E) and note. The accused is entitled to have a copy of the summary gratis; see r. 14 (B).

Summary  
award of  
punishment  
by com-  
manding  
officer.

6. (A) The term of detention when awarded by a commanding officer in days shall begin on the day of the award. The term of detention when awarded by a commanding officer in hours shall begin at the hour when the soldier sentenced is received at the detention barrack or branch detention barrack to which he is committed, or if he has not been sooner received into the detention barrack or branch detention barrack, shall begin on the day after the day of the award at the hour fixed for the commitment and release of soldiers under sentence<sup>1</sup>.

(B) When the commanding officer has once awarded punishment for an offence, he cannot afterwards increase the punishment for that offence<sup>2</sup>.

1. C.O.'s must bear in mind the regulations as to summary award of punishments; K.R., 498-507; and as to drunkenness; K.R. 508-518. See also Ch. IV, paras. 81-88.

A C.O. will award his sentence, up to seven days, in hours, but if exceeding seven days, in days; K.R., 494. In law (in the absence of special provision) there is no division of a day, and, therefore, however late in the day a soldier under sentence is committed, his term of detention is considered to have commenced at the first minute of that day, that is, the first minute after midnight. Where, therefore, the sentence is awarded in days, the sentence will begin on the first minute of the day of the award. But where a sentence is awarded in hours, the detention by virtue of this rule will not commence until the hour at which the soldier is received into the detention barrack or branch detention barrack, or if he is not received into a detention barrack or branch detention barrack on the day following the date of the award, then it will commence at the hour fixed for the commitment of soldiers under sentence on the day after the day of the award. This rule will, therefore, allow a C.O., when there is no accommodation in the branch detention barrack, to postpone the commitment of the soldier for one day, and to keep him in the guard detention room without his term of detention beginning to run, till the usual hour of commitment on the next day after the detention is awarded, whether Sunday or not (see r. 135 A). If, however, he is kept longer in the guard detention room, but is ultimately committed to a detention barrack, his term of detention will so begin to run, and, if not committed to a detention barrack at all, the detention begins to run from the usual hour of commitment on the day of award. It must be recollected that a soldier's pay cannot be stopped after having been awarded detention for any day on which he is in custody, before his detention begins to run under this rule.

2. The award is considered final when the soldier has been removed from the presence of the C.O. The C.O. can at any time diminish the punishment before its completion, though he cannot add to it.

As to entry of award or decision of C.O. in each case, see K.R., 485, 507.

7. (A) If a soldier is dealt with summarily by his commanding officer and the award or finding involves a forfeiture of pay, or (though such forfeiture is not involved) the award is not an award of a minor punishment<sup>1</sup>, and his commanding officer has omitted to ask him<sup>2</sup> whether he desires to be dealt with summarily or to be tried by a district court-martial, the soldier may, at any time on the same day before the hour fixed for the commitment and release of soldiers under sentence, claim his right to be tried<sup>3</sup> by a district court-martial.

Right of trial by court-martial in lieu of summary award.

(B) Except as mentioned in sub-section (8) of section 46 of the Army Act and in this rule, a soldier has no right to claim a trial by court-martial.

1. See K.R., 493 (iv), (v), (vi), (vii).

2. A C.O. should of course never omit to put to the soldier the question which he is directed to put by A.A. 46 (8); but in the case of such an omission the soldier may claim a court-martial within the time mentioned in this rule.

3. See Ch. V. para. 80, as to punishment in such a case.

8. (A) Where an officer is charged with an offence under the Army Act the investigation shall, if he requires it, be held, and the evidence taken in his presence in writing, in the same manner, as nearly as circumstances admit, as is required by Rules 3 and 4, in the case of a soldier<sup>1</sup>.

Procedure on charge against officer.

(B) Where an officer is ordered for trial by court-martial without any such taking of evidence in his presence, an abstract of the evidence to be adduced shall be delivered to him gratis not less than twenty-four hours before his trial, and shall be laid before the court-martial on the assembly of the court<sup>2</sup>.

1. The effect of this provision is to give the C.O. the option of dispensing with any public proceeding preliminary to trial, unless the accused officer demands it. It does not preclude the C.O. from calling the officer before him and investigating the case as he may deem necessary. The officer, however, can only demand the formal investigation of his case by the C.O., and has no right under this rule to demand a court of inquiry.

2. The convening officer will be responsible for the preparation and furnishing of this abstract, which should not be too much in detail. It should always be delivered as a matter of course, even though the subject matter of the charge may previously have been investigated by a court of inquiry; and if a court of inquiry has been held, the officer may have a copy of its proceedings; see r. 124 (M).

Where there are several charges, the abstract should be divided so as to correspond to each charge.

For the power to dispense with observance of this rule on the ground of military exigencies, or the necessities of discipline, see r. 104.

### *Framing Charges.*

**Charge-sheet and charge.**

9. (A) A charge-sheet contains the whole issue or issues to be tried by a court-martial at one time.

(B) A charge means an accusation contained in a charge-sheet that a person amenable to military law has been guilty of an offence.

(C) A charge-sheet may contain one charge or several charges.<sup>1</sup>

1. The convening officer is by r. 17 made responsible for the charge, which in practice is usually framed by the adjutant, or some other officer under the direction of the convening officer. The charge-sheet must be signed by the officer in actual command of the unit to which the accused belongs.

**Commencement of charge-sheet.**

10. Every charge-sheet will begin with the name and description<sup>1</sup> of the person charged, and should state, in the case of an officer, his rank, and name, and corps (if any), and in the case of a soldier, his number, rank, and name, and corps (if any), and where he does not at the time of the trial belong to the regular forces, should show by the description of him, or directly by an express averment, that he is amenable to military law<sup>2</sup> in respect of the offence charged.

1. As to materiality of name and description, see r. 12 and note.

2. As an officer or soldier of the regular forces is always subject to military law, a statement that the accused belongs to a battalion composed of the regular forces, will be sufficient to aver, and evidence of his so belonging will be sufficient to prove, without expressly adding the words, that he is subject to military law. If the accused belongs to the reserves, or to the territorial force, the charge must state, and the court must by evidence or from their military knowledge be satisfied, that he was at the time of the offence subject to military law. (See also Note on p. 676. See, however, Reserve Forces Act, 1882, ss. 6 and 15.) If he is a civilian, or if his name and position are unknown, as may happen in the case of active service, the charge should expressly aver that he was subject to military law, although it will be sufficient if the description of the accused is such as to imply that he was so subject. Evidence must be given of the fact, as, for instance, that he was a sutler, or the holder of a pass from the officer in command, or that he was found in camp, or in such circumstances as to show that he was subject to military law. See specimen charge-sheet, No. 9, p. 661.

**Contents of charge.**

11. (A) Each charge<sup>1</sup> should state one offence only,<sup>2</sup> and in no case should an offence be described in the alternative<sup>3</sup> in the same charge.

(B) Each charge should be divided into two parts—

(1) The statement of the *offence*; and,

(2) The statement of the *particulars* of the act, neglect, or omission constituting the offence.

(C) The offence should be stated, if not a civil offence, in the words of the Army Act<sup>4</sup>, and if a civil offence, in such words as sufficiently describe that offence, but not necessarily in technical words<sup>5</sup>.

(D) The *particulars* should state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect, or omission is intended to be proved against him as constituting the offence<sup>6</sup>.

(E) The *particulars* in one charge may be framed wholly or partly by a reference to the particulars in another charge<sup>7</sup>, and in that case so much of the latter particulars as is so referred to shall be deemed to form part of the first-mentioned charge as well as of the other charge.

(F) Where it is intended to prove any facts<sup>8</sup> in respect of which any deduction from ordinary pay can be awarded as a consequence of the offence charged, the *particulars* should state those facts.

1. For Forms of Charges, and Preliminary Notes as to their use, see pp. 650-659 and 646. See also Memoranda for guidance of Courts-Martial, p. 702 *et seq.*

2. A single transaction, although technically disclosing more than one offence, should not as a rule be made the subject of more than one charge. For instance, where violence to a superior is accompanied by insubordinate language, the violence alone should be charged, the language being admissible in evidence as to the intent. On the other hand, larceny of goods the property of separate owners should not be included in one charge.

3. Although the description of an offence in the alternative in the same charge would make the charge bad, it does not therefore follow that the word "or" is never to appear in the charge. For instance, a charge under A.A. 15 of "when in garrison, being found beyond the limits fixed by general orders without a pass or written leave from his commanding officer" is a good charge, because in this case he is not charged with one offence or the other, but with a single offence, which is constituted by his having neither a pass nor written leave. If in the charge the words "beyond the limits fixed by general or garrison orders" were used, the charge would be a bad charge, because it might be one offence to be beyond the limits fixed by general orders, and another offence to be beyond the limits fixed by garrison orders.

4. Under r. 134 (B), this will include the words of any other Act creating the offence, such, for instance, as the Acts relating to the reserve or auxiliary forces. Where the offence is under any such Act, care must be taken to observe this rule. See Note as to use of Forms of Charges (25), p. 648.

5. When offences against civil law are tried by court-martial under A.A. 41 although technical terms need not be used in the charge, the essence of the civil offence must be expressed—e.g., in a case of damaging property, the charge must aver the damage to have been done "maliciously."

6. If of the acts or omissions indicated in the particulars sufficient are not proved to constitute the offence charged, but nevertheless other acts and omissions not so indicated but sufficient to constitute the offence are proved the accused is entitled to be acquitted of the charge, but may be detained in custody and be tried anew in respect of the last-mentioned acts or omissions. For instance, if the accused is charged with having been absent without leave, in that he was absent from his unit without leave on Aug. 10, 11, and 12, and he proves that on those three days he was in barracks on duty, but it appears from the evidence that he was absent without leave on Aug. 21, the date is so material as to amount to a new charge, and the accused must be acquitted, though he may be tried by another court-martial on a new charge of being absent without leave on Aug. 21. In such a case a special finding is of no avail, as it cannot introduce new material particulars not mentioned in the charge. See note 3 to r. 44.

If, however, he were charged with being absent from Aug. 10, to Aug. 21 and it is proved that he was absent during that time, but that his absence began on the 1st and he was apprehended on the 23rd, he may be convicted, as the material part of the charge, absence from Aug. 10-21, is proved.

When there is such a divergence between the head of charge and the statement of the particulars that each in substance discloses a different offence, the charge is bad, and a conviction, even on a plea of guilty, could not be upheld. But the incidental mention of a separate offence in the particulars would not of itself invalidate the charge. A charge of desertion in which the particulars alleged that the accused broke out of barracks on a certain day, and was absent without leave for a certain time, was held to be good, inasmuch as these facts were mentioned as incidents of the offence charged, and the accused was still distinctly informed that the charge he had to meet was one of desertion. So was a charge of desertion (in which the duration of the absence was an element) where the particulars stated that the

accused absented himself without leave for the time stated. Where the head of charge discloses no offence, but the statement of particulars does, and with sufficient precision to inform the accused of his offence, a conviction of the offence disclosed in the particulars was, notwithstanding the irregularity, held good.

7. See, e.g., specimen charge-sheet No. 59, p. 670. If in such cases the persons charged were to be acquitted of the first charge and convicted on the second charge, the conviction when recorded should specify the place and date mentioned in the first charge.

8. If these facts are stated in the charge, evidence must be given by the prosecution to show the amount which ought to be deducted from the pay of the accused; see note as to use of Forms of Charge (28), p. 648.

As to evidence of value, see note to A.A. 138 (4).

Validity of  
charge-  
sheet.

12. (A) A charge-sheet shall not be invalid by reason only of any mistake in the name or description of the person charged<sup>1</sup>, if he does not object to the charge-sheet during the trial, and it is not shown that injustice has been done to the person charged.

(B) In the construction of a charge-sheet or charge there shall be presumed in favour of supporting the same every proposition which may reasonably be presumed to be impliedly included, though not expressed therein<sup>2</sup>.

1. Although the trial of an offender is not invalid on account of a mistake in a name, such mistakes are dangerous, in so far as they may lead to mistakes of substance. For instance, the accused might thus be mistaken for a man named in a certificate of previous conviction or in the conduct book, and a mistake of this description might cause the invalidity of the whole proceeding. Where, however, a man has enlisted and is commonly known under an assumed name, he may be described by that name. The court has power to amend the charge sheet by correcting, under r. 38 (A), any mistake in the name or description of the accused.

2. The object of this paragraph is purely legal, and does not touch the duties of an officer. If the proceedings were questioned in a court of law it would require that court to presume matters which, though not stated in the charge, were necessary to support its validity.

### *Preparation for Defence by Accused Person.*

Oppor-  
tunity for  
accused to  
prepare  
defence.

13. An accused person for whose trial a court-martial has been ordered to assemble shall be afforded proper opportunity of preparing his defence, and shall be allowed free communication<sup>1</sup> with his witnesses,<sup>2</sup> and with any friend or legal adviser<sup>3</sup> with whom he may wish to consult<sup>4</sup>.

1. The freest communication which is consistent with good order and military discipline and with the safe custody of the accused should be allowed. A failure to give the accused full opportunity of preparing his defence, and free communication with others for the purpose, may invalidate the proceedings.

2. The accused is not bound to call as a witness everyone with whom he communicates with reference to giving evidence.

3. As to friend of accused in court, see r. 87; and as to counsel rr. 88-94. As to the right of the accused to consult the judge-advocate on questions of law, see r. 103 (A).

4. For power to dispense with this rule, see r. 104.

Informa-  
tion of  
charge and  
delivery of  
summary of  
evidence  
and list of  
officers to  
accused.

14. (A) The accused, before he is arraigned,<sup>1</sup> should be informed by an officer<sup>2</sup> of every charge on which he is to be tried; and also that, on his giving the names of any witnesses whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly<sup>3</sup>; the interval between his being so informed and his arraignment should not be less, in the case of a regimental court-martial, than eighteen, and in the case of any other court-martial, than twenty-four hours.

(B) The officer,<sup>3</sup> at the time of so informing the accused, should give the accused a copy of the charge-sheet,<sup>4</sup> and, where the accused



is a soldier, should, if necessary, explain the charge-sheet and charges to him, and should also, if he is illiterate, read the charges to him.

The officer<sup>4</sup> will, at the same time, give to the accused gratis a true copy of the summary of evidence.<sup>5</sup>

(c) A list of the names, rank, and corps (if any), of the president and officers who are to form the court, and where officers in waiting are named, also of those officers, should, as soon as the president and officers are named, be delivered to the accused if he desires it.<sup>6</sup>

(d) If it appears to the court that the accused is liable to be prejudiced by any non-compliance with this rule, the court should take steps, and, if necessary, adjourn to avoid the accused being so prejudiced.

1. See Ch. V, para. 49.

2. The prosecutor will usually be the officer on whom the duty of complying with the provisions of this rule 14 devolves; when he is not, he should, before the trial, satisfy himself that it has been complied with. Compliance with this rule, as well as with r. 13, may be dispensed with on the ground of military exigencies, or the necessities of discipline, by virtue of r. 104; but in every case the accused must have information of the charge, and opportunity of calling his witnesses.

3. By r. 78 (A) the convening officer, or, after the assembly of the court, the president of the court, is required to take the proper steps to procure the attendance of witnesses whom the accused desires to call. C.O.'s will therefore take care that any request of the accused for witnesses shall be transmitted to the convening officer, or, after the court is convened, to the president of the court. The request of an accused person should only be refused if it is quite clear that the evidence of the witness will be immaterial, or if it is impossible to secure the attendance of the witness within a reasonable time. Any refusal of his request should be communicated to the court, with the reasons for the refusal, and the court will deal with the matter under (D). See also r. 77.

In the case of an essential witness the court should always adjourn for the purpose of enabling him to attend, as the absence of such a witness may cause the proceedings to be invalid.

4. A copy of the charge-sheet must always be given, unless this rule has been suspended under r. 104. Even where it is so suspended, the full charge must be clearly explained to the accused, as otherwise he has not proper opportunity to make his defence. If the accused objects to the charge he will have an opportunity of making his objection when called on to plead; r. 32.

5. The accused must also be given gratis a copy of the summary of evidence, except in a case where this rule has been suspended.

6. In the case of a general court-martial, this list should invariably be delivered, although a request is not made. In the case of a district court-martial also, the list should be delivered, notwithstanding the absence of a request, if there is any reason to suppose from the circumstances of the case that the accused may reasonably object to any member of the court.

15. Any number of accused persons may be tried together for an offence charged to have been committed by them collectively,<sup>1</sup> but in such a case notice of the intention to try the accused persons together should be given to each of the accused at the time of his being informed of the charge,<sup>2</sup> and any accused person may claim, either by notice to the authority convening the court, or, when arraigned before the court, by notice to the court, to be tried separately, on the ground that the evidence of one or more of the other accused persons proposed to be tried together with him will be material to his defence;<sup>3</sup> the convening authority or court, if satisfied that the evidence will be material, and if the nature of the charge<sup>4</sup> admits of it, shall allow the claim, and the person making the claim shall be tried separately.

Joint trial  
of several  
accused  
persons.

1. As to swearing of court to try several accused, see r. 71 and note.
2. Each of the accused should also be told that, if he gives evidence himself, and in doing so gives evidence against any of the other persons charged with the same offence, he will be liable to be cross-examined as to character. But this liability will not of itself entitle the accused to claim to be tried separately.
3. It must be remembered that though each of the accused is a competent witness, none of the other persons charged with the same offence can compel him to give evidence.
4. In the case of conspiring to cause a mutiny, or joining in a mutiny, the essence of the charge is combination between the accused. In such a case the nature of the charge may not admit of their being tried separately. In cases of doubt, the accused should be tried separately.

### *Convening of Court-Martial.*

Convening  
of regi-  
mental  
court-  
martial.

16. A regimental court-martial<sup>1</sup> shall be ordered to assemble as soon as seems to the convening officer practicable<sup>2</sup> (having regard to Rule 14 (A)), after the completion of the investigation by the commanding officer into the charge which the court-martial is to try<sup>3</sup>.

1. See A.A., s. 47; K.R., 559. Regimental courts-martial should now be of rare occurrence as the C.O. has ample powers of summary award to deal with most offences, and it has been laid down that, for cases not summarily disposed of, a district court-martial should as a rule be convened.

2. A regimental court-martial should assemble as soon as possible after the interval which is required by r. 14 (A) between the accused being informed of the charge and the meeting of the court. Where, therefore, that rule is suspended by an order under r. 104, the court should assemble immediately.

3. See generally as to the convening and composition of regimental courts-martial, A.A. 47 and 50 (2) and rr. 19-21.

Procedure  
of officer on  
convening  
court-  
martial.

17. (A) An officer before convening a court-martial<sup>1</sup> should first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Army Act, and that the evidence justifies a trial on those charges, and if not so satisfied should order the release of the accused, or refer the case to superior authority.<sup>2</sup>

(B) He should also satisfy himself that the case is a proper one to be tried by the description of court-martial which he proposes to convene.

(C) If more than fifteen days in the United Kingdom, or more than thirty days elsewhere, elapse between the time when an officer having power to convene a general or district court-martial receives an application for a court-martial, and the date at which the case is disposed of, either by the assembly of a general or district court-martial, or otherwise, the officer shall report the case, and the reasons for the delay, if elsewhere than in India, to the Army Council, and if in India to the Commander-in-chief of the forces in India.

(D) The officer convening a court-martial shall appoint or detail the officers to form the court,<sup>3</sup> and may also appoint or detail such waiting officers<sup>4</sup> as he thinks expedient.

(E) The officer convening a court-martial shall send to the officer appointed president the original charge-sheet on which the accused is to be tried, and the summary or abstract of evidence.<sup>5</sup>

1. With respect to the duties of the convening officer, see further. Ch. V, paras. 28-33 and K.R., 547-571.

Except in the case of a regimental court-martial, the C.O. of the accused who has investigated the charge or remanded the accused for trial cannot afterwards act as convening officer in the same case, but must refer it to a superior authority.

2. In the case of a general court-martial in the United Kingdom, the charge-sheet and summary of evidence should invariably be submitted by the convening officer to the Judge Advocate-General before the court is convened (see also r. 101 (A) and note).

8. The convening officer must state in the order convening the court his opinion—

- (1) as to the rank of the president (see A.A., 47 (4), 48 (9) );
- (2) as to the rank of members (r. 21); (see also K.R. 577).
- (3) as to members belonging to different corps or regiments (r. 20).

The opinion as to military exigencies dispensing with certain rules (see r. 104) should be in a separate order, signed by the convening officer.

See generally as to a general or district court-martial, the number of members and their qualification and rank, and the rank of the president, A.A., 48, 50, 182 (4); rr. 19-21; K.R. 576, 578. Whenever a general officer or colonel is available to sit as president of a general court-martial, an officer of inferior rank is not to be appointed. K.R., 578 (i).

Under A.A. 53 a court-martial which after the commencement of the trial is reduced below the legal minimum, is dissolved. K.R. 576, therefore points out that where the trial is likely to be prolonged it is desirable to form a general court-martial of more than the legal minimum, in order that the court may not be dissolved if one member fails through illness or otherwise. In such case not less than thirteen officers should usually be appointed, or if thirteen cannot conveniently be assembled, eleven. In the case of a district court-martial it will seldom be necessary to appoint more than the legal minimum, as it is unusual for a trial before a district court-martial to extend beyond two days, and little inconvenience will usually arise from the dissolution of the court, as if the proceedings have not been concluded, the accused can be tried by another court.

4. It will usually be desirable, in the case of a general court-martial where the trial is likely to be prolonged, to add two or more waiting officers, in order to fill the places of officers retiring on a challenge, and the same course will not infrequently be expedient in convening a district court-martial; K.R., 576.

5. The order for the assembly of the court-martial should also be sent. The notes to the Form of Application for a court-martial (p. 727) show how the convening officer should deal with the various documents transmitted to him.

The object of this paragraph is to enable the original charge-sheet to be annexed to the proceedings, and also to enable the president of the court-martial to examine, before the court meets, the charge-sheets and summary of evidence in the different cases, so that he may have a general knowledge of the cases which are to come before the court. If any amendment in the charges appears to him to be required he should communicate with the convening officer before the trial begins; see r. 5 (C).

Where the accused pleads guilty the summary of evidence may be used for determining the sentence; r. 37 (B). Otherwise the summary of evidence may be used at the trial for the purpose of showing that the witness has contradicted himself or has made a particular statement; and during the trial the president should compare the evidence given by each witness with his statement contained in the summary of evidence, and if there is any material variance should question the witness respecting the variance.

The summary of evidence cannot otherwise be used as evidence, and if the witness is absent, must not be read or referred to by the court so far as it relates to that witness. Great care must be taken by the members of the court not to be biased in any way by the statements in the summary of evidence, except so far as they affect the credibility of the witness by showing that he has contradicted himself; indeed, it may usually be expedient that no one but the president should refer to the summary.

Any statement (but not the evidence) of the accused contained in the summary of evidence, if not taken contrary to the directions in note to r. 4 (C)-(E), may, and usually should, be read to the court as evidence, whether it is in favour of or against the accused.

Where the accused pleads guilty, the summary of evidence is to be annexed to the proceedings (see Form of Proceedings, para. (4), p. 683). If the accused pleads not guilty, the summary will be enclosed with the proceedings when sent to the confirming officer; it need not, however, be annexed to the proceedings unless there is a material variance between the statement of any witness in the summary and his evidence at the trial.

*Abstract of Evidence.* See r. 8 (B).

Adjournment for insufficient number of officers.

18. (A) If before the accused is arraigned the full number of officers detailed are not available to serve, by reason of non-eligibility, disqualification, challenge, or otherwise, and if there are not sufficient officers in waiting to take the place of those unable to serve the court should ordinarily adjourn for the purpose of fresh members being appointed;<sup>1</sup> but if the court are of opinion that in the interests of justice, and for the good of the service, it is inexpedient so to adjourn, they may, if not reduced in number below the legal minimum, proceed, recording their reasons for so doing.

(B) If the court adjourns for the purpose of the appointment of a new president,<sup>2</sup> or of fresh members,<sup>3</sup> whether under these rules or otherwise, the convening officer may, if he thinks fit, convene another court.

1. A court for which, say, thirteen members have been detailed, will not ordinarily begin the trial with less than thirteen, although they may proceed, unless reduced below the legal minimum (see notes to rr. 16, 17). The court should always adjourn unless there are strong reasons against it.

If at any time the number of officers is, from whatever cause, below the legal minimum, or the president is absent (r. 65 (B)), there is no court; if the proceedings under r. 22 are not begun, no court can be formed; if they are begun they must immediately cease. In either case a report of the circumstances should be made to the convening officer by the president, or, if he is absent, by the senior officer present.

2. This will apply if the president is found to be ineligible or disqualified (rr. 19, 22), or not to be of the required rank (r. 22 (A) (iv)), or if an objection to the president is allowed (A.A., 51 (3), and r. 25), or if the president cannot attend (A.A., s. 53 (2)).

3. The court will adjourn in the circumstances mentioned in para. (A), as to which see rr. 19, 22, and 25, and A.A., 51. After the trial has once begun, fresh members cannot be appointed in any circumstances, A.A., s. 53 (1).

Ineligibility and disqualification of officers for court-martial.

19. (A) An officer is not eligible<sup>1</sup> for serving on a court-martial if he is not subject to military law.

(B) An officer is disqualified<sup>2</sup> for serving on a court-martial if he—

- (i.) Is the officer who convened the court; or
- (ii.) Is the prosecutor or a witness for the prosecution; or
- (iii.) Investigated the charges before trial, or took down the summary of evidence, or was a member of a court of inquiry respecting the matters on which the charges against the accused are founded, or was the company, &c., commander who made preliminary inquiry into the case; or
- (iv.) Is the commanding officer of the accused, or of the corps or battalion to which the accused belongs; or
- (v.) Has a personal interest<sup>3</sup> in the case.

(C) An officer is not eligible to serve on a court-martial unless he has held a commission during not less than the following periods, that is to say:—

- (i.) If it is a regimental court-martial, one whole year;
- (ii.) If it is a district court-martial, two whole years;
- (iii.) If it is a general court-martial, three whole years.<sup>4</sup>

1. *Eligible* is used with reference to an officer being subject to military law, and of the necessary standing. It refers, in point of fact, to the status of the officer, and involves no personal considerations.

2. *Disqualified*, on the other hand, is used with reference to personal disqualification on the part of an officer.

It will be observed that most of the disqualifications are also contained in A.A., 50 (2), (3); see note on that section.

Except so far as provided by r. 20, the corps to which an officer belongs is immaterial as regards his eligibility or qualification to serve on a court-martial; A.A. 50 (1).

3. This will extend to even a remote or very small interest; e.g. in a charge relating to the embezzlement of a sum, however small, belonging to the regimental mess, every officer of that mess has a personal interest, and is therefore disqualified. A remote or even a merely technical interest has been held to disqualify a person in a judicial position, e.g. a person who holds as trustee or otherwise on behalf of others money in which he has no beneficial share himself, nevertheless has a personal interest in any charge relating to that money.

4. Para. (c) is taken from A.A., 47 (2), 48 (3) (4). In addition an officer is not, when it can be avoided, to be detailed to sit on a court-martial unless he has previously attended as a supernumerary at least twenty-five times, and is, in the opinion of his C.O. competent; K.R., 572. When the number is three, not more than one member is to be a subaltern officer. In doubtful or complicated cases the court should still, when possible, consist of five officers.

Where a new trial is ordered no officer should be a member of the court who sat on the court at the previous trial.

20. (A) A general or district court-martial shall, as far as seems practicable, be composed of officers of different corps, and in no case shall be composed exclusively of officers of the same regiment of cavalry, or the same battalion of infantry, unless the convening officer states in the order convening the court that in his opinion other officers are not (having due regard to the public service) available, and also, if he belongs to the same regiment of cavalry or battalion of infantry as the accused, that an order to convene a court composed partly of other officers cannot be obtained from superior authority within a reasonable time.<sup>1</sup>

Corps of members of court-martial.

(B) In the case of a court-martial for the trial of an accused person belonging to the auxiliary and not to the regular forces, unless the convening officer states in the order convening the court that in his opinion it is not (having due regard to the public service) practicable, one member at least of the court should belong to that branch of the auxiliary forces to which the accused belongs.<sup>2</sup>

1. See A.A., 50. General and district courts-martial are army and not regimental courts. The general rule as to such courts-martial is that—

- (1) They should not be composed of officers belonging to the same corps; and
- (2) They must not be composed of officers belonging to the same regiment of cavalry or battalion of infantry, or the same Brigade of Artillery, or in the case of the Royal Garrison Artillery of officers serving in the same Lt.-Colonel's command.

This rule is subject to two exceptions:—(1) If it does not seem practicable to the convening officer that the court-martial should be composed of officers belonging to different corps, it may be composed of officers belonging to the same corps. (2) If the convening officer is of opinion that, having due regard to the public service, officers of more than one regiment of cavalry, battalion of infantry, &c., are not available, the court-martial may be composed of officers all belonging to the same regiment of cavalry or battalion of infantry; but in this case the convening officer must state in the order convening the court that such is his opinion. Further, if the convening officer belongs to the same regiment of cavalry or the same battalion of infantry as the accused, he must also state in the order that an order to convene a court composed partly of officers belonging to a different regiment of cavalry or battalion of infantry cannot be obtained from superior authority within a reasonable time.

If it becomes necessary for a convening officer to avail himself of the services of officers of another command for court-martial duties, the following procedure should be adopted:—the convening officer should apply to the command con-

cerned asking for the names of officers to compose the court and these names should be inserted in A.F.; A. 47. The command which furnishes the officers should then insert in the command orders an order to the effect that "the undermentioned officers have been placed at the disposal of the O.C. No. District (or G.O.C. th Brigade) for duty at a court-martial to assemble at (place) on (date)." The command order need not be attached to the proceedings of the court-martial.

2. Although there is no express provision as to the special reserve, if the accused belongs to the special reserve, one member of the court, should, if practicable, be an officer belonging to the special reserve of officers. If the accused belongs to the territorial force, then by this rule one member of the court must, if practicable, belong to the territorial force.

If an officer of the special reserve of officers, or of the territorial force respectively, is not available, the convening officer must state in the order convening the court that such is his opinion.

An officer of the regular forces who is an adjutant of a special reserve unit, or of a unit of the territorial force, is not considered to be an officer of the special reserve, or of the territorial force, as the case may be.

Rank of members of court-martial in certain cases.

21.<sup>1</sup> (A) In the case of a general court-martial, five at least of the members must not be below the rank of captain.<sup>2</sup>

(B) The members of a court-martial for the trial of an officer shall be of an equal, if not superior, rank to that officer, unless in the opinion of the convening officer, to be stated in the order convening the court and to be conclusive, officers of that rank are not (having due regard to the public service) available<sup>3</sup>; and in no case shall an officer under the rank of captain be a member of a court-martial for the trial of a field officer.

1. See in connection with this rule A.A. 48.

2. Whenever a general officer or colonel is available, an officer of inferior rank is not to be appointed president of a general court-martial; and on the trial of the C.O. of a corps, as many members as possible must be officers who have themselves held, or are holding, commands equivalent to that held by the accused; K.R., 578.

3. On the trial of a subaltern officer, two officers of subaltern rank will be a sufficient proportion to be detailed as members of the court.

#### *Procedure at Trial—Constitution of Court.*

Inquiry by court as to legal constitution.

22. (A) On the court assembling, the order convening the court shall be read, and also the names, rank, and corps of the officers appointed to serve on the court; and it shall be the first duty of the court to satisfy themselves that the court is legally constituted<sup>1</sup>; (that is to say),

- (i.) That so far as the court can ascertain, the court has been convened in accordance with the Army Act, and these Rules<sup>2</sup>;
- (ii.) That the court consists of a number of officers not less than the legal minimum,<sup>3</sup> and, save as mentioned in Rule 18, not less than the number detailed;
- (iii.) That each of the officers so assembled is eligible and not disqualified for serving on that court-martial<sup>4</sup>;
- (iv.) That the president is of the required rank and duly appointed<sup>5</sup>; and
- (v.) In the case of a general court-martial, that the officers are of the required rank.<sup>6</sup>

(B) The court should further, if it is a general or district court-martial to which a judge-advocate has been appointed, ascertain that the judge-advocate is duly appointed, and is not disqualified for acting at that court-martial.<sup>7</sup>

(C) The court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose.



1. It is of great importance for the court, as far as lies in their power, to ascertain that they have jurisdiction.

For form see Form of Proceedings, para. (1), p. 679. In addition to the requirements of this rule the court must satisfy themselves that it is composed in accordance with the order convening the court.

2. *I.e.*, in accordance with A.A. 47-50, 122-8, 179 (marines), 180 (Indian forces), 182 (warrant officers) 184 (persons not belonging to H.M.'s. forces) and r.r. 17-21.

The court, in considering whether they are convened in accordance with the Act and Rules, can only look at the order convening the court, and cannot inquire whether the officer issuing the order has or has not a warrant which justifies the issue of the order. But they must have regard to r.r. 20 and 21, and should see that the order states all that it is required to state. (See note 8 to r. 17).

3. See A.A., 47, 48, and note 8 on r. 17. In counting the number of officers the president is included.

4. This applies to the president as well as to the other officers. Where there has been a court of inquiry, care should be taken that no member of that court is appointed to serve on the court-martial, and the president will be careful to satisfy himself conclusively on this point before he fills in and signs the certificate referred to on p. 679, which is required to be entered in red ink at the bottom of the first page of the proceedings.

As to eligibility and non-disqualification, see r. 19 and note, and Ch. V, para. 37.

5. As to rank of president, see A.A. 47 (4), 48 (9), 182 (4). If the president in the case of a general or district court-martial is not a field officer, it will be necessary to ascertain that a proper statement is in the order convening the court.

6. See note 2 to r. 21.

7. The court must consider whether the judge-advocate is appointed by the proper authority as well as in the proper manner. In the United Kingdom, therefore, they should ascertain that the judge-advocate is appointed by the Judge-Advocate-General. Out of the United Kingdom, if the judge-advocate is appointed by the convening officer, the court must assume that that officer is authorised by a warrant to appoint the judge-advocate. As to disqualification, see r. 101 (B).

23. (A) The court, when satisfied on the above matters, should satisfy themselves<sup>1</sup> in respect of each charge about to be brought before them,—

*Inquiry by court as to amenability of accused and validity of charge.*

- (i). That it appears to be laid against a person amenable to military law,<sup>2</sup> and to the jurisdiction of the court<sup>3</sup>; and
- (ii). That each charge discloses an offence under the Army Act, and is framed in accordance with these rules<sup>4</sup>, and is so explicit as to enable the accused readily to understand what he has to answer.

(B) The court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose.

1. See Form of Proceedings, para. (1) p. 680. The inquiry by the court under r.r. 22 and 23 is not required to be, but may be, in closed court.

2. See introductory observations to A.A., Part V.

3. The following are examples of cases where the accused would not be amenable to the jurisdiction of the Court:—if the court were a regimental court-martial and the accused were a warrant officer or camp follower (A.A. 182 (1), 184 (1)); or if a reservist were charged with an offence committed when not subject to military law, unless the offence be one mentioned in the Reserve Forces Act, 1882, ss. 6, 15; if the accused were a field officer, and the court comprised a member under the rank of captain (A.A. 48 (7), and r. 21 (B)); if the court were a field general court-martial under A.A. 49, and the accused was not on active service, and the offence charged was not committed against the property or person of an inhabitant of, or resident in, the country.

In the case of persons not belonging to the forces, the question of amenability may depend on whether such person is subject to military law as an officer (A.A. 175 (7) (8)), or as a soldier (see A.A. 176 (9), (10)).

Where the accused is a marine, the question whether he is amenable or not (see A.A. 179 (1)) may not be apparent to the court, and in such a case the court must, at this stage of the proceedings, presume that the accused is amenable, unless he challenges their jurisdiction on some ground which appears to them reasonable and probable; in which case they should refer to the convening officer.

Questions of amenability may also possibly arise with reference to natives of India (see A.A. 175 (7), 176 (10), and 180 (2) (a)).

4. See r.r. 10 and 11.

### *Procedure at Trial—Challenge and Swearing.*

Appearance  
of prose-  
cutor and  
accused.

24. When the court have satisfied themselves as to the above facts, the prosecutor<sup>1</sup>, who must be a person subject to military law, should take his place, and the court shall cause the accused to be brought before the court.

I. The selection of the prosecutor is subject to the approval of the convening officer. But the convening officer must not appoint himself to be prosecutor, and the prosecutor must not confirm the finding and sentence of the court. In trials by general court-martial, and in complicated cases, a prosecutor should be specially selected for his experience and knowledge of military law, and should be, as far as possible, relieved from ordinary military duties, so that he may be enabled fully to master the case. In ordinary cases, one of the officers mentioned in r. 19 (B) (iii) may suitably be detailed to act as prosecutor.

A N.C.O. could act as prosecutor, if an officer is not available, in cases where the production of documents only is necessary.

Proceedings  
for chal-  
lenge of  
members of  
court.

25. <sup>1</sup> (A) The court, upon the accused being brought before them, shall ascertain<sup>2</sup> that the court is constituted of officers to whom the accused makes no reasonable objection<sup>3</sup>.

(B) The accused has no right to object to the prosecutor or judge-advocate.

(C) The accused shall state the names of all the officers to whom he objects before any objection is disposed of.

(D) The accused may call any person to give evidence in support of his objection<sup>4</sup>.

(E) If more than one officer is objected to, the objection to each officer will be disposed of separately, and the objection to the lowest in rank will be disposed of first; except that, if the president is objected to, the objection to him will be disposed of before the objection to any other officer. On an objection to an officer, all the other<sup>5</sup> officers present<sup>6</sup> shall declare their opinions on the disposal of the objection, notwithstanding that objections have been made to any of those officers.

(F) When an objection to an officer is allowed, that officer shall forthwith retire, and take no further part in the proceedings.

(G) When an officer objected to (other than the president) retires, and there are any officers in waiting, the vacancy shall be forthwith filled by one of the officers in waiting being directed to serve in lieu of the retiring officer<sup>7</sup>. If there is no officer in waiting available, the court will proceed as directed by Rule 18<sup>8</sup>.

(H) The eligibility, absence of disqualification, and freedom from objection of an officer filling a vacancy, including that of president, will be ascertained by the court, as in the case of other officers appointed to serve on the court<sup>9</sup>.

1. This rule must be read in connection with A.A. 51

2. For form, see Form of Proceedings, para. (2), p. 680.

3. The accused cannot object to the court collectively, but must make each objection separately. If the accused persists in objecting to the court collectively, the court should treat the objection as made to all the members individually, and should deal with such objections in the usual way. The court may be closed to consider each objection. The objections, together with the statement of any witnesses examined are to be entered in the proceedings.

An officer objected to on the score of personal enmity, prejudice, or malice, or for having formed and expressed an opinion on the case, should, unless the objection is obviously groundless, request, and be permitted, to withdraw.

Objections to individual members under this rule are quite distinct from a plea to the jurisdiction of the court (as to which see r. 34), though an objection may be equivalent to a plea to the jurisdiction of the court; as, for example, when an objection is made to the rank of the president, or when on the trial of a field officer one of the members is objected to because he is below the rank of captain. In such case the objection should be allowed, although it might be raised subsequently under r. 34.

As to objections to the *president*, see A.A. 51 (3) and (4) and r. 18 (B).

4. The witnesses cannot be examined on oath, as the court are not yet sworn, but r.r. 83 and 84 will substantially apply. The accused may apply to give evidence himself or to call his wife as a witness (see r. 80).

5. This excludes an officer from voting on his own case.

6. *I.e.*, who have not retired on the objection being allowed.

7. This "prescribes," for the purposes of A.A. 51 (5), the manner of filling a vacancy. Where any waiting members are detailed it is the duty of the president to appoint one of those members to fill a vacancy.

8. That is, if the court are reduced in number below the legal minimum, they must adjourn for the purpose of the appointment of fresh members; and though not so reduced they should ordinarily adjourn unless they are of opinion that, in the interests of justice and for the good of the service, it is inexpedient to adjourn.

9. Inasmuch as paragraph (H) directs that the eligibility and absence of disqualification of an officer filling a vacancy are to be ascertained by the court, as in the case of other members, the court will ascertain that he is eligible, and not disqualified under r. 19, before the accused is asked whether he objects to him, but as this does not form part of the recorded proceedings, it may be done by the court in the case of officers in waiting at the same time as the inquiry under r. 22, before the accused is brought before them. The accused will be asked whether he objects to the new officer, and if he does, the objection will be dealt with, if he is junior to any other officer objected to, immediately, if not, after the objections to any other officers who are junior to him have been disposed of. He will, though objected to, have to vote on the objection to any other officer who is junior to him. The court should always, in a doubtful case, allow an objection, as it is very important that the court should not only be impartial, but be believed by the accused and his comrades to be so.

26. As soon as the court is constituted with the proper number of officers who are not objected to, or the objections to whom have been over-ruled, the oath shall be administered to each member of the court as follows:—

Swearing members.

- (i.) If there is a judge-advocate, the oath shall be administered by him to the president first, and afterwards to the other members of the court;
- (ii.) If there is no judge-advocate, the oath shall be administered by the president to the other members of the court, and shall be administered to the president by any member of the court already sworn.

1. See, for form of oath, A.A. 52 (1); for form of proceedings, p. 681, para. (2), as to mode of swearing, note to r. 80; as to substitution of declaration for oath, A.A. 52 (4); as to swearing the court to try several persons, r. 71.

The oath may be administered to each member separately, or to two or more members collectively.

Swearing of  
judge-  
advocate  
and other  
officers.

27. After the members of the court are all sworn, an oath shall be administered<sup>1</sup> to the following persons, or to such of them as are present at the court-martial, by the president, or by some member of the court, or, except in the case of the judge-advocate, by the judge-advocate, if present, in the following form :—

(A) The form of oath for the judge-advocate shall be :

"You do swear that you will not, unless it is necessary for the due discharge of your official duties, divulge the sentence of this court-martial until it is duly confirmed; and that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you GOD."

(B) The form of oath for an officer attending for the purpose of instruction shall be :

"You do swear that you will not divulge the sentence of this court-martial until it is duly confirmed; and that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you GOD."

(c) The form of oath for a shorthand writer shall be :

"You do swear that you will truly take down to the best of your power the evidence to be given before this court-martial, and such other matters as you may be required, and will, when required, deliver to the court a true transcript of the same. So help you GOD."

(D) The form of oath for an interpreter shall be :

"You do swear that you will to the best of your ability truly interpret and translate, as you shall be required to do, touching the matter before this court-martial. So help you GOD."

1. See A.A. 52 (2), and note to r. 30. For form see Form of Proceedings, para. (2), pp. 681-2. A solemn declaration may be substituted when sanctioned by A.A. 52 (4).

Substitu-  
tion of  
solemn  
declaration  
for oath.

28. Where a person is permitted<sup>1</sup> to make a solemn declaration instead of being sworn, the form of declaration shall be as follows<sup>2</sup>; that is to say :

(A) In the case of the president or other member of the court :

"I, \_\_\_\_\_, do solemnly promise and declare that I will well and truly try the accused before the court according to the evidence, and that I will duly administer justice according to the Army Act now in force, without partiality, favour, or affection, and I do further solemnly promise and declare that I will not divulge the sentence of the court until it is duly confirmed, and further that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law."

(B) In the case of the judge-advocate :

"I, \_\_\_\_\_, do solemnly promise and declare that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not, on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law."

(c) In the case of an officer attending for the purpose of instruction :

"I, \_\_\_\_\_, do solemnly promise and declare that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not, on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law."

(D) In the case of a shorthand writer :

"I, \_\_\_\_\_, do solemnly promise and declare that I will truly take down to the best of my power the evidence to be given before this court-martial, and when required will deliver to the court a true transcript of the same."

(E) In the case of an interpreter :

"I, \_\_\_\_\_, do solemnly promise and declare that I will, to the best of my ability, faithfully and truly interpret and translate as I shall be required to do touching the matter now before this court-martial."

(F) The declaration shall be made before some person authorised by these rules to administer the oath.

1. See A.A. 52 (4).

2. In case a solemn declaration is made, a note should be added to the proceedings, stating that the individual has made a solemn declaration instead of being sworn.

29. When the oath is administered to or the declaration made by the members of a court who are about to try several persons, the plural shall be substituted for the singular wherever required.

Form of oath in case of trial of several persons.

30. (A) If any person desires to swear with uplifted hand in the form and manner in which an oath is usually administered in Scotland, he shall be permitted to do so.

Swearing of person according to the form of his religion.

(B) In any case an oath may be administered in such form and with such ceremonies as the person to be sworn declares to be, according to his religion, binding on his conscience.

(C) For the purpose of both (A) and (B) the words "You do swear" and "So help me GOD" may be omitted or varied.

1. The oath will usually be administered as follows:—The person to be sworn will take the book in his right hand ungloved. The person administering the oath will repeat the oath, and, on the repetition being ended, the person to be sworn will say the words "So help me GOD," and kiss the book. The words of the oath should be said with distinctness and solemnity by the person administering it.

The book must be the New Testament, or some book containing it. An oath taken on the Book of Common Prayer containing the Epistles and Gospels is properly taken, and a person violating the oath may be convicted of perjury.

In the case of a witness, it is well, in the interest of truth, to prevent subterfuges such as omitting the words "So help me GOD," or kissing the thumb instead of the book, as dishonest witnesses fancy that thus they escape the guilt of perjury.

If the above ceremonies are not in accordance with the religion of the person to be sworn, the ceremonies of his religion must be followed as provided by this rule. If he objects to take an oath, and the court are satisfied of the sincerity of the objection, or if he is objected to as incompetent to take an oath, and the court are satisfied that the oath has no binding effect on his conscience, the court should permit him to make a solemn declaration in the form directed by r. 28, or in the case of a witness, r. 82, A.A. 52 (4).

A person desiring to be sworn in the Scotch form will swear standing and holding up his right hand, and the oath will be in these terms: "I swear by Almighty GOD, as I shall answer to GOD at the Great Day of Judgment, that . . . ." If a person has expressed his desire to be so sworn, no question as to his religious belief is to be asked, nor is he to be required to hold or kiss a Bible while being sworn.

A Jew is sworn on the Old Testament, with his head covered. In the case of a Roman Catholic the book is closed, and a cross is marked on the cover. A Mahomedan is sworn on the Koran, sometimes kissing it or placing it on his head. In the case of natives of India, the form varies according to race, caste, and the part of the country, and it will be well to follow the practice of the civil courts of the district, and if they receive an affirmation instead of an oath, to receive such affirmation.

*Prosecution, Defence, and Summing-up.*

Arraign-  
ment of  
accused.

31. (A) After the members of the court and other persons are sworn as above mentioned, the accused shall be arraigned<sup>1</sup> on the charges against him.

(B) The charges upon which the accused is arraigned will be read to him, and he will be required to plead separately to each charge<sup>2</sup>.

1. See Ch. V, paras. 49, 50. The accused is usually arraigned by the president or the judge-advocate. For Form see Form of Proceedings, para. (3), p. 682. Where two or more persons are tried together for the same offence, each is separately arraigned.

2. The charge-sheet containing the charges as settled by the convening officer will be in the possession of the president, r. 17 (E), who will lay the charge-sheet before the court immediately before arraignment, and the charge-sheet will then be annexed to the proceedings. If any charge appears to the prosecutor to require amendment, he should communicate with the convening officer before the trial begins.

Objection  
by accused  
to charge.

32. The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Army Act, or is not in accordance with these rules.

1. See r.r. 9-12. For Form see Form of Proceedings, para. (3), p. 682. An objection to the jurisdiction of the court must be raised by way of special plea, r. 34.

If it appears that the accused is, by reason of insanity, unfit to take his trial, the court will find the fact specially, and he will be dealt with as provided in A.A. 130 and r. 57.

Amend-  
ment of  
charge.

33. (A) At any time during the trial, if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, the court may amend the charge-sheet so as to correct that mistake<sup>1</sup>.

(B) If on the trial of any charge<sup>2</sup> it appears to the court, at any time before they have begun to examine the witnesses<sup>3</sup>, that in the interests of justice any addition to, omission from, or alteration in<sup>4</sup>, the charge is required, they may report their opinion to the convening authority, and may adjourn, and the convening authority may either direct a new trial to be commenced, or amend the charge, and order the trial to proceed with the amended charge after due notice to the accused.

1. A mistake in name or description will only be amended, if it is clear to the court that the accused is the person intended to be charged in the charge-sheet, and that he is not prejudiced in his defence by the mistake having been made.

2. The court may act under this paragraph whether the objection to the charge is taken by the accused or the judge-advocate, or by a member of the court, and either before or after the arraignment of the accused. (See r.r. 23, 32.)

3. *I.e.*, the witnesses on the substance of the charge; not witnesses as to objections to the officers, or with respect to a special plea to the jurisdiction.

4. If the addition, omission, or alteration can be met by means of a special finding under r. 44 (as, for instance, by omitting some of the articles alleged to have been stolen or lost by neglect, or by correcting a mistake in an immaterial date), it will not usually be necessary to have the charge amended; but if the date is material, or if the charge appears not to disclose an offence under the Army Act, or if any addition requires to be made to the charge, it will be safer for the court to adjourn and apply for the amendment of the charge.

Special plea  
to the juris-  
diction.

34. (A) The accused, before pleading to a charge, may offer a special plea to the general jurisdiction of the court<sup>1</sup>; and, if he does so, and the court consider that anything stated in the plea shows that the court have not jurisdiction, they shall receive any evidence<sup>2</sup> offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and any address by the accused and reply by the prosecutor in reference thereto.



(b) If the court overrule the special plea they should proceed with the trial<sup>3</sup>.

(c) If the court allow the special plea<sup>4</sup>, they shall record their decision and the reasons for it, and report it to the convening authority and adjourn; such a decision shall not require any confirmation, and the convening authority shall either forthwith convene another court for the trial of the accused, or order the accused to be released.

(d) If the court are in doubt as to the validity of the plea, they may refer the matter to the convening authority, and may adjourn for that purpose, or may record a special decision<sup>5</sup> with respect to the plea, and proceed with the trial.

1. i.e., a plea to the right of the court generally to try the accused on any charge at all, as distinct from any plea which relates only to the particular charge on which the accused is brought before the court; e.g., a plea that the court is improperly constituted, either in respect of the rank or number of the members, or that the accused is not amenable (see note 3 to r. 28) to the court. A plea relating to the particular charge will be raised by way of plea in bar of trial, under r. 36, *q.v.*

2. Evidence, when necessary, must be taken on oath, like the evidence of other witnesses, and includes the evidence of the accused and his wife. The accused may, notwithstanding that he has given evidence, address the court in reference to the plea.

3. The confirmation of the finding, after a plea to the jurisdiction is overruled, will, without any special mention, necessarily have the effect of confirming the decision of the court overruling the plea. If, on the other hand, the confirming officer thinks that the plea to the jurisdiction, although it was overruled, is valid, he must refuse to confirm the finding of the court; but inasmuch as the court must in that case be considered as having had no jurisdiction to try the accused, the accused, in strict law, will not have been tried at all, and can, therefore, still be tried for the alleged offence.

4. If the court allow the plea, the convening officer cannot overrule the finding, but may convene another court.

5. This in effect transfers the question to the decision of the confirming authority, who should act merely as if the plea had been overruled; see note 3, *sup.*

35. (A) If no special plea to the general jurisdiction of the court is offered, or if such plea, being offered, is over-ruled, the accused person's plea—"Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly<sup>1</sup> either one or the other, a plea of "Not guilty")—shall be recorded on each charge. General plea of "Guilty" or "Not guilty."

(B) If an accused person pleads "Guilty," that plea shall be recorded as the finding of the court; but, before it is recorded, the president, on behalf of the court, should ascertain that the accused understands the nature of the charge<sup>2</sup> to which he has pleaded guilty, and should inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure<sup>3</sup> which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence that the accused ought to plead not guilty<sup>4</sup>.

1. If the accused pleads in some language not understood by the court, or inarticulately, he will not have pleaded intelligibly, and a plea of "Not guilty" will be entered.

2. This direction is to prevent the accused pleading guilty under a misapprehension. E.g., a man charged with wilfully damaging his arms may, under a misapprehension, plead guilty, because the arms have been actually damaged, though not wilfully. In such a case the president must explain to him that if he did not do it wilfully, he must plead not guilty. So, again, on a charge for desertion, the plea "Guilty, but I intended to return" amounts to a plea of "Not guilty," as the intention not to return is (except as mentioned in Ch. III, para. 16) an essential element in the offence of desertion.

3. This is shown by r. 37. See also Ch. V para. 54.

4. A plea of "Guilty" is only to be taken to the extent to which it is pleaded. Thus a man arraigned upon a charge of losing by neglect a number of articles, who pleads guilty in respect of some of those articles only, must be taken to have pleaded "Not guilty," as regards the remaining articles. An accused person arraigned upon a charge of receiving property knowing it to have been stolen, who pleads guilty "except that he did not know it was stolen," must be dealt with as having pleaded not guilty. So as regards any act of which the intention is an element, where the accused pleads guilty, but says that he "did not intend to do it," or words to that effect; so if the accused pleads guilty to two or more alternative charges, the president shall point out that he can only be guilty of one.

Generally, the president has, under this rule, the duty of advising the accused to withdraw a plea of guilty, if it appears from the summary of evidence that he ought to plead not guilty.

If the accused pleads guilty, a statement that the requirements of r. 35 (B) have been complied with must be recorded; see Form of Proceedings, para. (8), p. 682.

It must be recollected that there is nothing untrue in a person pleading not guilty, even though he committed the offence, as the plea merely amounts to an expression of desire to have a formal trial; e.g., if a man admits that he struck a N.C.O., but wishes to show that it was done under circumstances of very great provocation and does not therefore deserve severe punishment, he must plead not guilty, as if he pleads guilty he will not be able, either by cross-examination of the prosecutor's witnesses or by calling witnesses on his own behalf, to show the existence of such provocation, save as above mentioned under r. 37 (F).

As to procedure where it appears from subsequent proceedings that the plea of guilty was entered under a misapprehension, see r. 37 (D).

#### Plea in bar.

36. (A) The accused at the time of his general plea of "Guilty" or "Not guilty" to a charge for an offence, may offer a plea in bar of trial on the ground that—

- (1) he has been previously convicted or acquitted of the offence by a competent civil court or by a court-martial or has been dealt with summarily by his commanding officer for the offence<sup>1</sup>; or
- (2) the offence has been pardoned or condoned by competent military authority<sup>1</sup>; or
- (3) the time which elapsed between the commission of the offence and the beginning of the trial was more than three years<sup>1</sup>, or in the case of a civil offence<sup>2</sup> proceedings in respect of which must be commenced within a shorter period than three years, more than that shorter period.

(B) If he offers a plea in bar the court shall record it as well as his general plea, and if they consider that any fact or facts stated by him are sufficient to support the plea in bar they shall receive any evidence offered<sup>3</sup> and hear any address made by the accused and the prosecutor in reference to the plea.

(C) If the court find that the plea in bar is proved they shall record their finding, and notify it to the confirming authority, and shall either adjourn, or if there is any other charge against the accused, whether in the same or in a different charge-sheet, which is not affected by the plea in bar, may proceed to the trial of the accused on that charge.

(D) If the finding that a plea in bar is proved is not confirmed, the court may be re-assembled by the confirming authority, and proceed as if the plea had been found not proved.

(E) If the court find that a plea in bar is not proved, they shall proceed with the trial, but such a finding shall be subject to confirmation like any other finding of the court.

1. The Army Act provides that a man shall not be liable to be tried for an offence of which he has been convicted or acquitted by a court-martial (s. 157), or by a civil court (s. 162 (6)), or for which he has been dealt with summarily by his commanding officer (s. 46 (7)), or which (with the exceptions of mutiny, desertion, or fraudulent enlistment) was committed more than three years before the date of the trial (s. 161).

2. In general there is in civil courts (except courts of summary jurisdiction) no limitation of time within which criminal proceedings for civil offences may be commenced, but in some few cases—e.g., carnal knowledge of a girl between 13 and 16—proceedings must be commenced within a shorter period than six months from the commission of the offence; see Ch. VII, para. 38. In these cases proceedings must be commenced in the military courts within the shorter period.

3. See note to Rule 34 (A).

87. (A) Upon the record of the plea of "Guilty," if there are other charges in the same charge-sheet to which the plea is "Not guilty," the trial will first proceed with respect to those other charges, and, after the finding on those charges, will proceed with the charges on which a plea of "Guilty" has been entered; but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge, or may, instead of trying him, record a finding of "Not guilty" on each alternative charge to which the accused has not pleaded "Guilty."<sup>1</sup>

(B) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges) the court shall receive any statement<sup>2</sup> which the accused desires to make in reference to the charge, and shall read the summary or abstract of evidence, and annex it to the proceedings, or if there is no such summary or abstract, shall take and record sufficient evidence to enable them to determine the sentence, and the confirming officer to know all the circumstances connected with the offence. This evidence will be taken in like manner as is directed by these Rules in the case of a plea of "Not guilty."

(C) After evidence has been so taken, or the summary or abstract of evidence has been read, as the case may be, the accused may make a statement in mitigation of punishment, and may call witnesses as to his character<sup>3</sup>.

(D) If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of "Guilty," the court shall alter the record and enter a plea of "Not guilty," and proceed with the trial accordingly.

(E) If a plea of "Guilty" is recorded, and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under (B) and (C) will take place when the findings on the other charges in the same charge-sheet are recorded.

(F) When the accused at any court-martial states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same<sup>4</sup>.

1. In the illustration of charge in Appendix 1, p. 659, the charges are not alternative, and therefore, if the accused pleads guilty to one charge and not guilty to the other charge the court should proceed to try him on the charge to which he has pleaded not guilty. In the case of alternative charges a man cannot be guilty of all of them; e.g., in the case of specimen charge sheet 59 p. 670, he cannot both have "made away with" and "lost by neglect," the same articles of his regimental necessaries. If, therefore, he pleads guilty to one charge, the court should usually

enter a finding of not guilty on the other, as inconsistent with the one to which he has pleaded guilty; but if the summary of evidence shows clearly that he made away with the articles, and he pleads guilty only to losing them by neglect, the court should try him for the making away with his necessities, inasmuch as it is a more serious offence than losing by neglect, and a soldier ought not, by pleading guilty to the less grave offence, to escape punishment for the graver one.

2. If it appears from this statement or otherwise that the accused did not understand the effect of his plea of "Guilty," it will be the duty of the court to record a plea of "Not Guilty," and to proceed with the trial. (See notes to r. 35 and for form of proceedings see under "variation" on p. 683). Or, again, if he alleges very great provocation for the offence, it may be desirable to record a plea of "Not Guilty" in order to allow the existence of such provocation to be proved in the ordinary way.

If a court fail to observe this rule and treat such a plea as mentioned in note to r. 35 in the case of desertion, as a plea of "Guilty," the confirming officer should refuse confirmation; he can then order a new trial. See A.A. 54 (6), 157, and notes. If he confirms, the whole proceedings are nevertheless invalid.

8 In the case of a plea of "Guilty," the accused will always be asked whether he has any witnesses to call as to character. For form see Form of Proceedings, para. (4), p. 684. If evidence is taken the accused can cross-examine the witnesses both in extenuation of the offence with a view to the mitigation of punishment, and as to character; see r. 39, and Form of Proceedings, para. (4), p. 684. It will be observed that the accused cannot, except by permission of the court under (F), call witnesses in extenuation of the offence and consequent mitigation of punishment.

4. The court should always, if accused requests it, allow witnesses to be called, to prove any statement made by him in mitigation of punishment.

Withdrawal  
of plea of  
"Not  
guilty."

38. The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not guilty," and plead "Guilty," and in such case the court will at once, subject to a compliance with Rule 35 (B), record a plea and finding of "Guilty," and shall, so far as is necessary, proceed in manner directed by Rule 37.

1. If the accused proposes to withdraw his plea of not guilty, the court must inform him of the general effect of his withdrawal, and of the difference in the procedure, in the same manner as if he pleaded guilty under r. 35.

Plea of  
"Not  
guilty" and  
case for the  
prosecution.

39. After the plea of "Not guilty" to any charge is recorded, the trial will proceed as follows<sup>1</sup> :—

(A) The prosecutor may, if he desires, make an opening address.<sup>2</sup>

(B) The evidence for the prosecution shall then be taken.<sup>3</sup>

(C) If it should be necessary for the prosecutor to give evidence for the prosecution, he should give it after the delivery of his address, and he must be sworn, and give his evidence in detail.<sup>4</sup>

(D) He may be cross-examined by the accused, and afterwards may make any statement which might be made by a witness on re-examination.

1. For form see Form of Proceedings, para. (5) p. 684.

2. In cases of any complexity, such as cases of embezzlement, the prosecutor should always make an opening address for the purpose of explaining the charge, and enabling the court better to follow the evidence. This is the only object of the address. As a rule the address of the prosecutor should be in writing. See further r. 60, and note.

3. As to the evidence, see r.r. 81 to 86. The evidence will be taken by question and answer; r. 83.

All facts essential to constitute the offence charged must be proved; e.g., on a charge of making false accusations, &c., it is necessary to prove—

(1) That the accusation was made against an officer or soldier by the accused;

(2) That it was false;

(3) That the accused made it knowing it was false.

Respecting the duty of the president, see r. 59, and note.

4. The prosecutor should never himself give evidence *before* the finding unless it be to prove a date or other formal matter, or produce documents: and even formal matter should not be left to be proved by him, if it can possibly be helped. The production of documents which are in his possession is not open to the same objection. As to evidence by the prosecutor *after* the finding, see note to r. 46.

The only possible exception to the rule of the prosecutor not giving evidence will be occasionally on active service, where the trial cannot be postponed, and the same officer is a material witness and also the only available officer for the duty of prosecutor. In these exceptional cases, it is essential that his sworn statements as a witness should be kept quite distinct from his statements made as prosecutor. Consequently he must give his evidence before any other witness, and in detail, and must not, after delivering an address, be allowed to swear generally to the statements contained in it.

If several cases are tried before the same court on the same day, and the same person is prosecutor in more than one such case, he must, if he gives evidence, be sworn as a witness in each case. It is not sufficient that he has been previously sworn, as the oath must be taken in the presence of the accused in respect of whom he gives evidence.

Documentary evidence will be read by the judge-advocate, or by the president, or by some member of the court, and will be entered on the proceedings.

When counsel appears on behalf of the prosecutor, (C) and (D) do not apply; see r. 89 (D).

40.—(1) At the close of the evidence for the prosecution the accused shall be told by the court that he may, if he wishes, give evidence as a witness, but that if he gives evidence he will subject himself to cross-examination<sup>1</sup>.

Procedure where no witnesses; to facts (except accused) called.

(2) The accused will then be asked whether he wishes to give evidence as a witness himself, and whether he intends to call any witnesses to the facts of the case other than himself.<sup>2</sup>

(3) Unless the accused states that he intends to call witnesses to the facts of the case<sup>3</sup> other than himself the procedure will be as follows:—

- (A) The accused, if he wishes to do so, will give evidence as a witness.<sup>4</sup>
- (B) At the close of the evidence of the accused, or, if the accused has not given evidence, then immediately after the accused has been asked the question mentioned in (2) the prosecutor may address the court a second time for the purpose of summing up the evidence for the prosecution and commenting on the evidence of the accused (if any).<sup>5</sup>
- (C) The accused will then be asked if he has anything to say in his defence and may address the court in his defence.<sup>6</sup>
- (D) The accused may call witnesses as to his character.
- (E) The prosecutor may produce, in reply to the witnesses as to character, proof of former convictions and entries in the conduct book, but he may not again address the court.<sup>7</sup>

1. The information required to be given to the accused will be given by the judge-advocate, or, if there is not one, by the president. Great care should be taken to explain to the accused, especially if he is not defended by counsel, that he need not give evidence unless he wishes, and what his position will be if he gives evidence himself. (See also notes to r.r. 80 and 94.)

2. The questions will be put by the judge-advocate, or, if there is not one, by the president. The accused must be informed of the difference between witnesses to facts and witnesses to character only. In particular it must be explained to the accused that if he announces his intention of calling any witnesses as to character he will not subsequently be allowed to produce any evidence as to facts (other than his own evidence) in extenuation of the offence, or otherwise. Further, the accused must be told that his wife cannot be called as a witness (unless he applies to the court to have her called (as to the

exceptions to this rule, see notes to r. 80). For forms see Form of Proceedings, paras. (6) and (7), pp. 686-690.

3 Every witness except a witness to character only is a witness to the facts of the case. Accordingly, a witness as to extenuating circumstances is a witness to the facts of the case.

4. If the accused is the only witness to the facts of the case he is to give his evidence directly after the close of the case for the prosecution. No questions may be put to the accused as to his character except in the circumstances specified in r. 80. (As to the duty of the president and judge-advocate towards the accused, see r.r. 59 (B) and 103 (G) and (H) and notes.)

5. The observations with respect to the opening address of the prosecution (see note to r. 60 (A)) apply equally to his second address. In summing up the evidence the prosecutor must confine his remarks to the evidence. He may comment on the evidence given by the accused, but must not comment on the fact that the accused or his wife has not given evidence. He must not keep back or gloss over any weak points of the evidence of the prosecution, or the strong points of the evidence for the defence; in fact, he should understate rather than overstate that view of the facts which it is his duty to bring before the court on behalf of the prosecution; still less must he state any new fact relating to the case, which has not been given in evidence. Any deviation in these respects on the part of the prosecution, or any want of moderation, may lead to the proceedings being invalidated. The court should, so far as possible, stop the prosecutor transgressing in any of these respects. The accused, on the other hand, has the privilege, whether he has given evidence himself or not, of making statements in his address unsupported by evidence, and when those statements are made on the personal knowledge of the accused, they must be dealt with as evidence, though not on oath. But if the accused has given evidence himself, any statement which could have been made on oath can hardly have much weight with the court if not so made. See also note to r. 43 (A).

6. The fact that the accused has given evidence himself will not deprive him of his right of addressing the court, unless he is defended by counsel or by an officer acting as counsel; see r. 94 and note.

7. This evidence can only be adduced before the finding in cases where the accused calls witnesses to character or obtains from the prosecutor's witnesses evidence of his good character.

Procedure  
where  
witnesses  
are called  
for defence.

41. If the accused states that he intends to call witnesses to the facts of the case, other than himself, the procedure will be as follows<sup>1</sup> :—

- (A) The accused will be asked if he has anything to say in his defence, and may address the Court in his defence<sup>2</sup>.
- (B) The accused may himself give evidence as a witness, and may call his other witnesses, including witnesses as to character<sup>3</sup>.
- (C) After the evidence of all the witnesses for the defence has been taken, the accused may again address the Court, and the time at which his second address is allowed is in these rules referred to as the time for the second address of the accused.
- (D) The prosecutor will be entitled to address the Court in reply.

1. For form, see Form of Proceedings, para. (8), p. 690.

2. As to the questions to be addressed to the accused, see notes to r. 40. The utmost liberty consistent with the interest of parties not before the court, and with the dignity of the court itself, should be allowed to the accused in making his defence (see r. 60 (C)), and the court should, if necessary, adjourn to allow him time for its preparation. If the accused has expressed an intention of giving evidence himself, he should be warned against making statements as to facts within his own knowledge which he will not be able to substantiate on oath. As to friend of accused and counsel, see r.r. 87-94.

3. The accused is entitled to give his evidence at any time whilst the evidence for the defence is being heard, and even though he has previously



stated that he did not intend to give evidence himself. He should, however, usually give his evidence before any other witnesses for the defence and should be warned that if he gives his evidence after hearing the evidence of other witnesses for the defence, the value of his evidence may be considerably discounted. The prosecutor would be justified in commenting on the fact that the accused had chosen to give his own evidence after hearing the evidence of his other witnesses.

42. (A) The judge-advocate, if any, will, unless he and the court think a summing-up unnecessary, sum up in open court the whole case to the court<sup>1</sup>. Summing-up by judge-advocate.

(B) After the judge-advocate has spoken, no other address shall be allowed.

1. The summing-up of the judge-advocate ought, like that of a judge to a jury, to be perfectly impartial; see r. 103 (G), (H). In simple cases a summing-up is unnecessary; but even where the facts are simple, difficult questions may sometimes arise as to the particular offence which the acts constitute in law, and in that case the judge-advocate should give his opinion on the legal point. The judge-advocate has, it will be observed, a right to sum-up whenever he considers a summing-up necessary. The summing-up need not be in writing.

The judge-advocate may in his summing-up comment on the fact that the accused has not applied to give evidence himself or to call his wife as a witness; whether he does so or not must be left to his individual discretion in each case. The judge-advocate may also comment on the fact that the accused has chosen to give his evidence after hearing the evidence of other witnesses for the defence.

If the summing-up is unnecessary, an entry to that effect must be made in the proceedings; see Form of Proceedings, para. (9), p. 691.

### *Finding and Sentence.*

43. (A) The court will deliberate on their finding in closed court<sup>1</sup>. Consideration of finding.

(B) The opinion of each member of the court will be taken separately on each charge<sup>2</sup>.

1. See r. 63.

The president may commence the deliberation on the finding by a statement of the questions to be considered, and the order in which they are to be considered, and the bearing of the evidence on those questions, and other members of the court may comment on the evidence, and the truth or otherwise of the defence.

The great points for all the members to keep before their minds are (1) that according to one of the fundamental maxims of English law a man is to be presumed innocent until he is proved guilty, and (2) that they have to find *according to the facts proved in evidence*; and to this end they must carefully separate mere statements made by the prosecutor or by the accused, when not giving evidence on oath, from facts proved by the respective witnesses. Some weight may, however, be allowed to a statement of the accused, even though not given on oath; e.g., if the statement would not have been admissible as evidence from the accused, or if it is corroborated incidentally, or otherwise, by evidence, or if the accused has been unable to procure a witness who might have given evidence on the point, considerable weight may be allowed to the statement. It will, however, be hardly possible to attach any weight to a statement not on oath which the accused might have made on oath and subjected to the test of cross-examination.

Where the proceedings are voluminous, the judge-advocate should be prepared with such notes as may assist the members in referring to any particular part of the evidence. He will not offer any opinion except on legal points; see r. 103.

It is competent to the court, if they think fit (see r. 86 (D)), to call or recall a witness for the purpose of putting any question deemed essential; but any such witness must be examined in the presence of the parties, and all questions put to him, whether by a member of the court, the prosecutor, or accused, will be put through the president.

2. As to taking opinions, see r. 69, and note. The opinions will be taken separately on each charge, and the court, if they think that the offence stated in any charge is not proved, must acquit the accused on that charge, irrespec-

tive of any other charge; but where the charges are *alternative*, the conviction under one necessarily involves an acquittal under the other charges, as, for instance, in the example in specimen charge sheet 59, p. 670.

Form and  
record of  
finding.

44. (A) The finding on every charge will be recorded and, except as mentioned in these rules, will be recorded simply as a finding of "Guilty," or of "Not guilty," or of "Not guilty and honourably acquit him of the same."<sup>1</sup>

(B) Where the court are of opinion as regards any charge that the facts which they find to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, they may, instead of a finding of "Not guilty," record a special finding<sup>2</sup>.

(C) The special finding may find the accused guilty on a charge, subject to the statement of exceptions or variations specified therein<sup>3</sup>.

(D) Where the court are of opinion as regards any charge that the facts proved do not disclose an offence under the Army Act, the court will acquit the accused of that charge.<sup>4</sup>

(E) If the court doubt as regards any charge whether the facts proved show the accused to be guilty or not of an offence under the Army Act, they may, before recording a finding on that charge, refer to the confirming authority for an opinion, and, if necessary, adjourn for that purpose.<sup>5</sup>

(F) Where there are alternative charges, and the facts proved appear to the court not to constitute the offence mentioned in any of those alternative charges, the court shall record a finding of "Not guilty" on that charge; but if the court think that the facts so proved constitute one of the offences stated in two or more of the alternative charges, but doubt which of those offences the facts do at law constitute, then they may, either before recording a finding on those charges refer to the confirming authority for an opinion, and, if necessary, adjourn for the purpose, or they may record a special finding, stating the facts which they find to be proved, and stating that they doubt whether those facts constitute in law the offence in such one or another of the alternative charges as are specified in the finding.<sup>6</sup>

1. For form see Form of Proceedings, paras. (10) and (11), p. 692. Under A.A. 54 (3) an acquittal on a charge requires no confirmation. For procedure where the finding is "Not guilty" on all the charges, see r. 45. The finding of honourable acquittal may be recorded in the case of N.C.O.s. and privates as well as of officers, but is not to be recorded as a matter of course upon an acquittal. A finding of honourable acquittal is incorrect in a case where the charge does not affect the honour of the accused person.

Another case in which an honourable acquittal is incorrect is thus pointed out by the Duke of Wellington (Well. Desp., vol. 5, 221-2):—

"It is difficult and needless at present to define in what cases honourable acquittal is peculiarly applicable; but it must appear to all persons to be objectionable in a case in which any part of the transaction which has been the subject of investigation before the court-martial is disgraceful to the character of the party under trial. A sentence of honourable acquittal by a court-martial should be considered by the officers and soldiers of the army as a subject of exultation, but no man can exult in the termination of any transaction, a part of which has been disgraceful to him; and although such a transaction may be terminated by an honourable acquittal by a court-martial, it cannot be mentioned to the party without offence, or without exciting feelings of disgust in others; these are not the feelings which ought to be excited by the recollection and mention of a sentence of honourable acquittal."

2. For form of special finding, see Form of Proceedings, para. (10), p. 692, and for form of acquittal, para. (11), p. 692. In case of

immaterial variation, the finding may simply be recorded as "Guilty"; as, for example, if the accused is found to have made away with his regimental necessities on the 25th, and not on the 26th of August, or to have made away with two pairs of boots, and not one pair of boots, the variation is immaterial, and he may simply be found guilty of the charge.

8. Thus, if the court find that the facts stated in the charge are only proved in part, they may find the accused guilty, subject to the exceptions or variations. The facts, however, which they find to be proved, subject to the exceptions or variations, must amount to the substance of the offence actually charged, otherwise the court should acquit the accused. If, e.g., in the case supposed by specimen charge sheet 59 (p. 670), they find that the accused made away with one brush, but not the pair of boots, the other brush, and the shirt, they may find the accused guilty, with the exception that he did not make away with the pair of boots, one brush, and the shirt. If, on the other hand, they find from the evidence that he did not make away with a pair of boots, two brushes, or a shirt, but did make away with other regimental necessities, they must acquit the accused; or if they find that he lost the articles aforesaid, but did not make away with them by sale or otherwise, they must acquit him of the charge of making away with them. As to the application of this principle to cases of absence without leave, see note 6 to r. 11.

4. If, for example, a man is charged with receiving, knowing it to be stolen, the money of a comrade, and the court are of opinion that, although the money had actually been stolen, the accused was unaware of the fact, they must acquit him, inasmuch as the act of receiving stolen money, apart from guilty knowledge, would not amount to an offence.

5. This paragraph provides that, where the court doubt as to whether the facts proved constitute in law the offence charged, the court may refer to the confirming authority. For instance, if they find that the accused took certain sums of money, but doubt whether the circumstances under which he took them do or do not constitute embezzlement, or an offence of a fraudulent character, they may state the facts which they find proved, and refer to the confirming authority for an opinion as to whether they constitute the offence. The court, however, cannot refer to the confirming authority for any opinion as to the facts, but merely as to the legal results to which those facts amount. The reasons for reference and the opinion of the confirming authority should be recorded in the proceedings.

6. The special findings above mentioned relate only to the particulars in the charge. A special finding can in no case (except under A.A. 56 as mentioned below) alter the statement of the offence in the charge; but under this paragraph, if there are alternative charges, and the court doubt whether the facts proved amount in law to one charge or the other, and they do not think it advisable to refer to the confirming authority for an opinion, they can record a special finding, and thus leave it to the confirming authority under r. 55 (A) to determine whether the facts found by the court constitute in law the one offence or the other. For example, if on a charge for insubordinate language, they find that the accused used the language charged, but doubt whether the language is such or was used under such circumstances as to be in law an offence within A.A. 8, they may record a special finding, setting out the language they find to be used, and the officer to whom, or the circumstances under which, it was used, and state that they doubt whether the use of the language under the circumstances is insubordinate or not. The confirming authority will then decide, under r. 55 (A), whether such a finding amounts to a conviction on any of the charges.

The only other description of special finding which affects the statement of the offence is in those cases where by A.A. 56 a man charged with one offence may be found guilty of another offence; see note on that section.

45. (A) If the finding on each of the charges in a charge-sheet is "Not guilty," the president will date and sign the proceedings, the findings will be announced in open court<sup>1</sup>, and the accused will be released in respect of those charges<sup>2</sup>. Procedure on acquittal.

(B) The proceedings shall then, upon being signed by the judge-advocate (if any), be transmitted at once in like manner as is directed by these rules<sup>3</sup> in the case where the findings require confirmation.

1. This is required by A.A. 54 (3). For forms see Form of Proceedings, para. (11), p. 692.

2. Consequently the accused may be kept in custody and tried on the charges of any *other* charge-sheet, or on any other charge which is in course of investigation by his commanding officer.

3. See r.r. 50 and 97.

Procedure  
on conviction.

40. (A) If the finding on any charge is "Guilty, then, for the guidance of the court in determining their sentence, and of the confirming authority in considering the sentence, the court, before deliberating on their sentence, may take evidence of and record the character, age, service, rank, and any recognized acts of gallantry or distinguished conduct, of the accused, and the length of time he has been in arrest or in confinement on any previous sentence<sup>1</sup>, and any deferred pay, military decoration, or military reward<sup>2</sup>, of which he may be in possession or to which he is entitled, and which the court can sentence him to forfeit<sup>3</sup>.

(B) Evidence on the above matters may be given by a witness verifying a statement which contains a summary of the entries in the regimental books<sup>4</sup> respecting the accused person, and identifying the accused as the person referred to in that summary.

(C) Evidence on the part of the prosecutor upon the above matters should not be given by a member of the court.

(D) The accused may cross-examine any such witness, and may call witnesses to rebut any such evidence<sup>5</sup>; and if the accused so requests, the regimental books, or a duly certified copy<sup>6</sup> of the material entries therein, shall be produced; and if the accused alleges that the summary is in any respect not in accordance with the regimental books, or such certified copy, as the case may be, the court shall compare the summary with those books or copy, and if they find it is not in accordance therewith, shall cause the summary to be corrected accordingly.

When all the evidence on the above matters has been given, the accused may address the court thereon.

(E) If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the court renders him liable to any exceptional punishment<sup>7</sup> in addition to that to be awarded by the sentence of the court, it will be the duty of the prosecutor to call the attention of the court to the fact, and it will be the duty of the court to enquire into the nature and amount of such additional punishment.

1. For form see Form of Proceedings, para. (12), p. 693.

The court will always take evidence as to character, unless the circumstances render it impracticable so to do, in which case they will record the reasons for such impracticability in the proceedings.

Any previous convictions of the accused may be proved by the production of a verbatim extract from the regimental books, certified by the officer in charge of those books (A.A. 163 (g), K.R., 1916-1921). But a conviction by a civil court may be proved by the production of a certificate (A.A. 164) of the conviction, and must be so proved if there is reason to doubt the correctness of the entry of the conviction in the regimental books. A witness must always be called to prove the identity of the accused with the person stated in the extract or certificate to have been convicted.

It must be recollected that it is not competent for the court to take verbal evidence of the accused being a *bad* character. The badness of his character must be proved by former convictions and entries in the conduct book, and not by the expression of any opinion to that effect by witnesses, although such opinion is admissible as evidence of *good* character. However, if the accused calls evidence of good character, the prosecutor may cross-examine those witnesses, with a view to test their veracity, and thereby indirectly bring out evidence of bad character. If the accused himself gives evidence, the prosecutor may in such cases cross-examine him as to character; see r. 80 and note.

Witnesses in favour of the character of the accused will be called, as a rule, either as part of his defence, or after his address and before the finding; but under (D) of this rule may be called to rebut the evidence given by the prosecutor after the finding.

In cases of alleged desertion, the fact of the accused having surrendered or been apprehended should not be left until after the finding; it is one of the material facts of the case, and as such ought to be proved by the prosecutor; it may have some bearing on the question of whether the accused intended or not to return.

The court will not, when the accused belongs to the regular forces, take evidence of any conviction while he was a civilian. But convictions by a civil court while the accused is a soldier may be given in evidence although the offence was committed while he was in a state of absence or desertion; K.R., 553.

Evidence of expenses, loss, damage, or destruction will be taken in the course of the trial, as r. 11 (F) provides that the facts justifying any deduction from pay are to be stated in the particulars. In case such evidence has not been taken, there is nothing to prevent the court taking it after the finding, if necessary. In case of damage caused by an offence, the cause and effect must be closely related in order to warrant a sentence of stoppages. Thus an accused person would not for this purpose be said to have caused damage to a military policeman's clothes because the policeman fell down and damaged them while in pursuit of the accused when endeavouring to escape.

If two or more persons are convicted of a joint offence, each of them may be ordered to pay the whole amount of the compensation for any expenses, loss, damage, or destruction occasioned by that offence. Each of them is liable to pay the whole compensation in default of the other. If both contribute to the payment, proviso (b) to A.A. 138 (see note) will prevent either of them being charged with an undue amount, as that proviso forbids deductions more than sufficient to make good the compensation.

2. For definition of military decoration and military reward see A.A. 190 (18) and (19).

3. See A.A. 44 (11) (12). The court cannot take evidence with respect to any decoration of which the court cannot order the forfeiture, as, for example, the Companionship of the Bath or the Victoria Cross. The object of taking this evidence and evidence of the rank of the accused is for the purpose of enabling the sentence to be awarded correctly; see r. 47.

4. A statement containing a summary of the entries against the name of the accused in those books, with a statement as to his age, service, rank, &c., is to be produced, and verified by a witness as being correctly extracted from the regimental books; a witness must also identify the accused as being the person referred to in such statement. This witness should usually be the adjutant or some other officer. There is nothing to prevent the prosecutor being the witness, and the remarks in the note to r. 39 (C) do not apply. The prosecutor must, however, be sworn like any other witness; it is not sufficient that he should have been sworn as a witness before the same court on the same day in the course of the trial of some other person. If the accused challenges the correctness of the statement, the regimental books, or a duly certified copy thereof, must be produced, and the court must compare the statement with the books; see (D) of this rule.

The witness producing the statement referred to in this paragraph and identifying the accused should be the adjutant or some other officer, and the witness may be cross-examined by the accused.

5. The accused is entitled to give evidence himself to rebut the evidence given by the witnesses of the prosecution as to his character; but if he does so, he will render himself liable to be cross-examined as to character; see r. 80 and note.

6. This means a copy certified by the officer having the custody of the book; A.A. 163 (h).

7. This means such punishment as forfeiture of corps pay (see P.W. arts. 860, 862, 869, and 871 or prolongation of service of a soldier of the territorial force; see T.R.F. Act. 20 (3) and T.F. Regs. 269.

47. Where the court desire to sentence an officer,<sup>1</sup> to forfeit seniority of rank<sup>2</sup>, they may sentence him to take rank and precedence in his corps, or in the army, or in both, as if his appointment to the rank or ranks held by him, and specified in the

Mode of forfeiting seniority of rank of officer or non-commissioned officer.

sentence, bore the date of some day or days specified in the sentence, and later than the actual date of his said appointment.

In the case of a non-commissioned officer<sup>3</sup> the court will sentence him to take rank and precedence<sup>4</sup> as if his appointment to the rank held by him, and specified in the sentence, bore the date of some day specified in the sentence, and later than the actual date of his said appointment.

1. For form, see Form of Proceedings, para. 12, p. 695.

Under this rule an officer whose commission as captain was dated on the 1st of January, 1912, may be sentenced to take rank in the army and in his regiment as if his commission bore date the 1st of March, 1913. If, for instance, it is wished to reduce a captain to the bottom of the list in his regiment he may be sentenced to take rank and precedence in his regiment and in the army as if his commission bore date on the day which is specified in the sentence, and which is the next day to the date of the commission of the junior captain of the regiment. If his rank in the army differs from that in his regiment the sentence may apply to the former only.

2. See A.A. 44, f.

3. As to effect of such a sentence in the case of a N.C.O.; see A.A. 44, notes 12 and 13.

4. See Form of Proceedings, para. 12, p. 696.

Sentence.

**48.** The court shall award one sentence in respect of all the offences of which the offender is found guilty,<sup>1</sup> and that sentence shall be deemed to be awarded in respect of the offence in each charge in respect of which it can be legally given, and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given.<sup>2</sup>

1. For form see Form of Proceedings, para. (12), pp. 695-697.

The court will award such sentence as they think the offender ought to suffer, and the judge-advocate or president will enter it at once in the proceedings. For observations on the duty of the court in awarding sentence, see Ch. V, paras. 78-88, and K.R., 583; the sentence must, of course, be authorised by the Army Act (see s. 44), and the court cannot, for example, sentence an offender to restore stolen property; though an order for restoring property found in his possession may, under A.A. 75, be made by the confirming authority or the Army Council.

2. The object of the latter portion of this rule is to prevent legal objections to the sentence. If, for example, the offender has been convicted on a charge of having made away with his regimental necessities, for which the maximum punishment under the Army Act is imprisonment, and also on a charge of desertion after a previous conviction, which is punishable with penal servitude, the court may pass a sentence of penal servitude, and that sentence will, under this rule, be valid because justified by the second charge, although not justified by the first charge. (See also r.r. 54 and 55.) This rule will apply whether the charges on which the offender has been tried are in one charge-sheet or in several charge-sheets.

Recommendation to mercy.

**49. (A)** If the court make a recommendation to mercy they shall give their reasons for their recommendation<sup>1</sup>.

(B) If the court recommend any restoration of service under section 79 of the Army Act the recommendation, with the reasons for it, shall be entered in the proceedings.

(C) The number of opinions by which a recommendation mentioned in this rule, or any question relative thereto, is adopted or rejected, may be entered in the proceedings.

1. A recommendation to mercy will be appended to the sentence, and be embodied in the proceedings before they are signed by the president. See A.A. 58 (9), and note. As to exceptional character of a recommendation to mercy, see Ch. V, para. 88. For form see Form of Proceedings, para. (12), p. 697.



50. Upon the court awarding the sentence, the president shall date and sign the sentence<sup>1</sup>, and such signature shall authenticate the whole of the proceedings, and the proceedings, upon being signed by the judge-advocate<sup>2</sup>, if any, shall be at once transmitted for confirmation<sup>3</sup>.

Signing and transmission of proceedings.

1. For form see Form of Proceedings, para. (12), p. 697. It is essential that the sentence be signed by the president, as under A.A. 68, a term of penal servitude, imprisonment, or detention commences on the day on which the sentence and proceedings were signed by the president. His signature after the sentence will authenticate all the proceedings of the trial.

2. The judge-advocate (if any) will sign after the president.

3. See also r. 97. As a rule, certified copies of original documents produced in evidence by the prosecutor, and not the originals themselves, will be annexed to the proceedings; K.R., 581.

### *Confirmation and Revision.*

51<sup>1</sup>. (A) In the case of a finding which does not require confirmation, the confirming officer shall not make any remarks in the proceedings<sup>2</sup>, but if he thinks that anything in the case requires further attention he shall report it to superior authority as directed by His Majesty's regulations.

Procedure of confirming officer.

(B) In the case of findings or sentences which require confirmation the confirming authority—

(1) May direct the re-assembly of the court for the revision of the finding or sentence, or either of them, stating the reasons for revision<sup>3</sup>; and

(2) Upon receiving the proceedings, whether original or revised<sup>4</sup>, may confirm or refuse confirmation, and the confirmation, or non-confirmation, shall be entered in and form part of the proceedings<sup>5</sup>.

1. This rule must be read in conjunction with A.A. 54 and r. 52.

2. As to remarks by confirming officer, see K.R., 589, 590.

3. A finding of insanity, in which case there is no sentence, may be sent back for revision.

A confirming officer cannot send back a part of a finding or sentence for revision; if he thinks that part only requires revision on account of invalidity or otherwise, he should return the whole, pointing out the part which he considers to require revision.

As under A.A. 54 (2) the confirming authority cannot recommend the increase of a sentence, nor can the court, on revision, for any reason increase the sentence previously awarded, the object of revision will be mainly either to cure defects in the proceedings of the court where the offender has been found guilty, or to give the court an opportunity of acquitting or passing a more lenient sentence on, the offender. If, however, the sentence is wholly illegal, it is null (see note to r. 56 (A)), and the court, on revision, have the same power of sentence as if they had passed no sentence at all. If, e.g., a regimental court martial sentenced a soldier to be discharged with ignominy, and the confirming officer sent back the sentence for revision as being null, the court might proceed to pass a legal sentence.

See generally as to the duty of a confirming officer where the proceedings are illegal or irregular, K.R., 591.

4. "Original" here means the proceedings of the court where no revision has taken place, whether from the finding or sentence not having been sent back for revision or from a revision not having taken place, in consequence of the dissolution of the court as mentioned in the note to r. 52 (A). "Revised" applies to the proceedings after the court have re-assembled for revision.

5. Confirmation should be effected simply by the word "confirmed." The word "approved" should not be added. Any remarks will be separate from, and form no part of, the proceedings. In no case will the confirming authority comment upon a finding of "not guilty," or upon the inadequacy of a sentence. For form see Form of Proceedings, para. (14), p. 699.

Procedure,  
&c.

**52. (A)** Where the finding or sentence is sent back for revision, the court should re-assemble in closed court<sup>1</sup>, and shall not receive any further evidence<sup>2</sup>.

(B) Where the finding is sent back for revision, and the court do not adhere to their former finding, they shall revoke the finding and sentence, and record a new finding<sup>3</sup>, and, if the new finding involves a sentence<sup>4</sup>, pass sentence afresh.

(c) Where the sentence alone is sent back for revision, the court shall not revise the finding.

(d) After revision the president shall date and sign the decision of the court, and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.<sup>5</sup>

1. See r. 63. The court should re-assemble at the time mentioned in orders, which should be as soon as practicable.

When the court is assembled for revision, it is technically the same court. Consequently, if it is reduced by death, inability to attend, or otherwise, below the legal minimum (see notes to r.r. 16-19), it is dissolved, and cannot re-assemble for revision, and the proceedings must be returned, without any entry thereon, to the confirming authority. Or, again, if the president is dead or unable to attend, a new president, if the senior member of the court is of sufficient rank, must be appointed by the convening authority. See A.A. 53 (2).

2. See also A.A. 54 (2). This provision covers evidence both for the prosecution and the defence.

3. Where the finding is sent back for revision and the court adhere to the finding, they can nevertheless revise the sentence; see A.A. 54 (2) and notes to preceding rule.

4. If the finding was insanity, or was an acquittal, no sentence will be involved. For form see Form of Proceedings, para. (13), p. 698.

5. For form see Form of Proceedings, para. (13), p. 697. See also r. 97, and K.R., 592, 594-596.

Promulga-  
tion.

**53.** The charge, finding, sentence, and confirmation of a court martial shall be promulgated in such manner as the confirming authority may direct; and if no direction is given, according to the custom of the service<sup>1</sup>.

1. As to promulgation, see K.R., 593. For form of promulgation, see p. 699.

A finding of acquittal on all charges is directed by A.A. 54 (3), to be pronounced at once in open court. No further promulgation is required. In every other case the charge, finding, sentence, and confirmation must, under this rule, be promulgated. Consequently, if the finding on some of the charges is acquittal, and on others conviction, the finding of acquittal must be promulgated, together with the finding of conviction; and a finding of conviction, though not confirmed, will still be promulgated.

In the absence of any direction by the confirming authority, the usual custom of the service will be followed, but a written notice to the offender of the charge, finding, sentence, and confirmation will be sufficient promulgation to satisfy this rule.

As to the execution of sentence, see Ch. V, paras. 100-3, and generally as to the disposal of soldiers under sentence, K.R., 600, *et seq.*

Under A.A. 53 (9), a recommendation to mercy must be promulgated and communicated to the offender, together with the finding and sentence. The confirming officer may direct observations recorded by him to be communicated in a separate minute to the members of the court, or in the orders of the command, as he may think most desirable. K.R. para. 589.

If a sentence of penal servitude, imprisonment, or detention is confirmed, then, in default of any committal by superior authority, the C.O. of the offender, as soon as may be after the promulgation of the sentence, will sign the order for his committal to some prison or detention barrack in accordance with any general or special instructions he has received from superior authority. K.R., 602, 608. As to commitment abroad. K.R., 603, 609-612.

54. (A) Where a sentence has been awarded by court-martial in respect of offences in several charges, and the confirming authority confirms the finding on some but not on all of those charges, that authority shall take into consideration the fact of such non-confirmation, and shall, if it seems just, mitigate, remit, or commute the punishment awarded according as seems just, having regard to the offences in the charges the findings on which are confirmed<sup>1</sup>.

Mitigation of sentence on partial confirmation.

(B) Where a sentence has been awarded by a court-martial in respect of offences in several charges and has been confirmed, and any one of those charges or the finding thereon is found to be invalid, the authority having power to mitigate, remit, or commute the punishment awarded by the sentence shall take into consideration the fact of such invalidity, and if it seems just, mitigate, remit, or commute the punishment awarded according as seems just, having regard to the offences in the charges which with the findings thereon are not invalid, and the punishment as so modified shall be as valid as if it had been originally awarded only in respect of those offences<sup>2</sup>.

(C) Where a sentence passed by a court-martial has been confirmed, and is found from any reason to be invalid, the authority who would have had power to commute the punishment awarded by the sentence if it had been valid may pass a valid sentence, and the sentence so passed shall have the same effect as if passed by the court-martial, but the punishment awarded by that sentence shall not be higher in the scale of punishments than the punishment awarded by the invalid sentence, nor, in the opinion of the said authority, be in excess of the last-mentioned punishment<sup>3</sup>.

1. E.g. Where a man has been convicted on one charge of desertion after a previous conviction, and on another charge of having made away with his regimental necessaries, and has been sentenced to penal servitude, and the confirming officer confirms the finding on the second charge, but not that on the first charge, which justified the sentence of penal servitude, he is bound under this rule to commute the sentence at least to imprisonment.

If the second charge in the above case were striking an officer, and the confirming officer refuses to confirm the finding on that charge while confirming the finding on the first charge, it will be his duty to consider whether the sentence of penal servitude is not too severe for the offence of desertion unaccompanied by aggravating circumstances, and if he thinks so, he will commute it to some less punishment. See generally, as to the duty of the confirming officer in the exercise of his powers of commutation or mitigation; K.R., 588.

2. The object of this paragraph is to allow any permanent authority to do after confirmation what (A) allows to be done before confirmation, that is to say, to provide that if one of several charges is found to be invalid, the commuting authority may mitigate or commute the sentence, so as to make it a valid sentence in respect of any other charge which is valid.

3. This paragraph enables the commuting authority to substitute a valid sentence for a sentence found after confirmation to be invalid.

55. (A) Where a special finding has been recorded in relation to alternative charges under Rule 44 (F)<sup>1</sup>, and the confirming authority is of opinion that the facts found by the special finding constitute in law the offence charged by any of the alternative charges, that authority may confirm the finding, and in that case shall declare that the finding amounts to a finding of guilty on that charge; but if it is afterwards declared by any authority having power to remit or commute the punishment awarded that the said facts constitute in law the offence charged in one of the other alternative charges, then the confirming authority, or such other authority as aforesaid, may declare that the finding amounts to a finding of guilty on that

Confirmation of finding on alternative charges.

alternative charge; and the finding shall be a valid finding of guilty on the charge specified in that behalf in the declaration made on confirmation, or, in case of a subsequent declaration, in that subsequent declaration.

(B) The sentence awarded in the case of any such special finding may likewise be confirmed, subject to this proviso, that if the offence in one of the alternative charges involves a higher punishment, or is otherwise graver, than the offence in the charge of which the offender is found to be guilty under the terms of any declaration mentioned in (A), the authority making the declaration, or some other authority having power to mitigate, remit, or commute the punishment awarded, shall mitigate, remit, or commute the punishment according as seems just, having regard to the last-mentioned offence; and the punishment as so modified shall be as valid as if it had been originally awarded in respect of the last-mentioned offence.

1. See note 6 to r. 44. For forms see Form of Proceedings, para. (14) p. 699.

Confirmation not-withstanding informality in, or excess of, punishment.

56. (A) If the sentence of a court-martial is informally expressed, the confirming authority may, in confirming the sentence, vary the form so that it shall be properly expressed; and if the punishment awarded by the sentence is in excess of the punishment authorised by law, the confirming authority may vary the sentence so that the punishment shall not be in excess of the punishment authorised by law; and the confirming authority may confirm the finding and the sentence as so varied of the court-martial<sup>1</sup>.

(B) Whenever it appears that a court-martial had jurisdiction to try any person, and that that person was charged with some offence or offences under the Army Act, and was shown by legal evidence to have been guilty of the offence or one of the offences charged, the finding in respect of the offence or offences of which he is so shown to be guilty, and the sentence, may be confirmed, and if so confirmed shall be valid, notwithstanding any deviation from these rules or any defect or objection, technical or other, unless it appears that any injustice has been done to the offender; but nothing in this rule shall relieve an officer from any responsibility for any wilful or negligent disregard of any of these rules<sup>2</sup>.

1. The object of this paragraph is to prevent the proceedings of courts-martial being rendered invalid, when they cannot be sent back for revision without great inconvenience to the public service. It will not exonerate from blame the presidents and members of courts-martial who pass sentences which are informal, or in excess of their powers, and confirming officers will, if practicable, send the finding and sentence back for revision, and if they act under this rule, will call the attention of the court to the informality or illegality of the sentence.

The confirming authority may vary the form in which a sentence is expressed, but cannot amend a sentence wholly illegal; as, for example, if an officer convicted of scandalous conduct were sentenced to dismissal, or if a soldier were sentenced by regimental court-martial to be discharged with ignominy, or if a non-commissioned officer were sentenced to be reduced to the rank of lance-corporal, or to be reprimanded, or if a soldier were sentenced to be confined to barracks, or if a soldier not on active service were sentenced to field punishment.

In any such case the confirming officer should treat the sentence as a nullity, and direct the court to re-assemble and pass a valid sentence. This proceeding would not be a revision of the sentence, so that the law prohibiting the increase of punishment on a revision would not apply, and the sentence in the case above mentioned of the officer might be cashiering, and of the non-commissioned officer might be reduction to the ranks, or forfeiture of seniority of rank.

Where, however, the punishment exceeds what is authorised by law, the confirming authority can, though such sentence is illegal, vary the sentence so as to bring it into conformity with law, and confirm it as varied.

2. This paragraph will prevent a miscarriage of justice arising in consequence of defects in the procedure which do not affect the real merits of the case. These defects will usually be of a technical character, as any substantial defect, such as accepting hearsay evidence, or using a copy of a document where the original ought to have been produced, or calling a witness without proper notice to the accused, or refusing to admit evidence adduced by the accused, would ordinarily cause injustice to the person charged. As the law of this country always resolves any doubt in favour of the accused, the court should never allow any technicality to interfere with the accused making his defence in the fullest manner, and while as a whole disregarding technicalities in favour of what they consider to be, in substance, fairness for the purpose of the trial, they must recollect that even a disregard of a technicality may, in some cases, cause injustice, as the object of most technical rules is to prevent injustice. Before, therefore, a confirming officer, in reliance on this rule, confirms a finding and sentence in any respect irregular, he must take care to ascertain that no injustice, however small, has been done to the accused; and the preferable course is, where possible, to send the case back for revision or for another trial. In every case the confirming officer will call the attention of the officer responsible for the irregularity to the deviation from the rule, or the defect in the proceedings; as officers will be held responsible for such deviation or defect, even though under this rule the conviction of the accused may be upheld.

It may be convenient to note here that if, after confirmation, the charges or the findings thereon are declared to be invalid, the trial must be treated as null, and consequently the person convicted must be relieved from all consequences of his conviction, and all record of the conviction must be erased; but in cases where the sentence alone is invalid the finding will stand good, and therefore the soldier convicted will suffer the forfeitures and other penalties which are consequential on conviction.

Where punishment is remitted, that remission, unless otherwise expressed, will not extend to forfeiture of service or good conduct pay, or to any forfeiture which he suffers by virtue of his conviction, without being sentenced to it. K.R., 591.

### *Insanity.*

57. (A) Where the court find either that the accused is unfit, by reason of insanity, to take his trial, or that he committed the offence with which he is charged, but was insane at the time of the commission thereof, the president shall date and sign the finding, and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.<sup>Provisions as to finding of insanity, and custody of insane person.</sup>

(B) If the finding is not confirmed, the accused may be tried by the same or another court-martial for the offence with which he was originally charged.

(C) Where the finding is confirmed, then, until the directions of His Majesty as to the disposal of the accused are known, or in the case of an accused person unfit to take his trial, until any earlier time at which the accused is fit to take his trial, the accused shall be confined in such manner as may, in the opinion of the proper military authority, be best calculated to keep him securely without unnecessary harshness, as he is not to be considered as a criminal but as a person labouring under a disease.

1. It is to be observed that two distinct cases are contemplated. A person may have been sane at the time he committed the offence, but may not be sane enough to take his trial; while, on the other hand, a man insane at the time of committing the offence, may have recovered sufficiently to take his trial. In the former case, if an accused person, found not sane enough to take his trial, recovers before any directions of His Majesty as to his disposal are known, he should be ordered for trial.

2. This rule supplements A.A. 180 which requires a finding of insanity to be confirmed like any other finding. If, therefore, it is not confirmed, the trial of the accused must proceed in the ordinary course.

For form see Form of Proceedings, para. (11), p. 692.

*General Provisions as to Proceedings of Court.*

Seating of  
members.

**58.** The members of a court-martial will take their seats according to their army rank, except that in the case of a regimental court-martial consisting entirely of officers of the same corps<sup>1</sup>, they will take their seats according to their rank in that corps<sup>1</sup>.

1. As to meaning of "corps," see A.A. 190 (15).

Responsi-  
bility of  
president.

**59. (A)** The president is responsible for the trial being conducted in proper order and in accordance with the Army Act, and will take care that everything is conducted in a manner befitting a court of justice<sup>1</sup>.

(B) It is the duty of the president to see that justice is administered, and that the accused has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a person under trial, or of his ignorance, or of his incapacity to examine or cross-examine witnesses or to make his own evidence clear or intelligible, or otherwise<sup>2</sup>.

1. The court should always have before them a copy of the Army Act, of the King's Regulations, and of the Rules of Procedure, and of any other official books or orders relating to courts-martial which are necessary for the purpose of its proceedings.

2. The president should, like the judge of a civil court, act as counsel for an accused person not defended by counsel. He will therefore cause to be called before the court any witness, though not called either by the prosecution or the defence, whom he considers able to give material evidence to the court, and a witness so called may be cross-examined by the prosecutor and the accused (see r. 78); the president has, however, no power to call the accused as a witness (see r. 80). The president will also put to the witnesses (including the accused if he gives evidence) any questions which appear to him necessary or desirable to elicit the truth. In particular, he should put questions to the accused (if he gives evidence) for the purpose of enabling him to explain any circumstances appearing in the evidence for the prosecution; but he must not cross-examine the accused, and should not put questions to him with a view to supplement the evidence for the prosecution.

It will also be the duty of the president to take care that the accused does not suffer any prejudice in consequence of his inability to put proper questions to witnesses, or of his not being able, in giving evidence, to bring out clearly the points which he wishes brought out, or of his not fully understanding the nature of the proceedings. The president will also examine the summary of the evidence, and if a witness gives different evidence from what is there recorded, will question him as to the difference.

If there is a judge-advocate he has a similar duty; r. 103 (G). The presence of a judge-advocate, however, does not relieve the president from his duty under this rule.

Power of  
court over  
address of  
prosecutor  
and  
accused.

**60. (A)** It is the duty of the prosecutor to assist the court in the administration of justice, to behave impartially, to bring the whole of the transaction before the court, and not to take any unfair advantage of, or suppress any evidence in favour of, the accused<sup>1</sup>.

(B) The court may stop the prosecutor in referring to any matter not relevant to the charge<sup>2</sup> then before the court, or any matter which the court is not investigating, and it is the duty of the court to restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor, and to prevent the prosecutor from commenting<sup>3</sup> at any time on the failure of the accused or his wife to give evidence.

(C) The court should allow great latitude to the accused in making his defence<sup>4</sup>; he must abstain from any remarks contemptuous or disrespectful towards the court, and from coarse and insulting language towards others, but he may for the purposes of his defence impeach the evidence and the motives of the witnesses and prosecutor, and charge other persons with blame and even criminality



subject, if he does so, to any liability to further proceedings to which he would otherwise be subject. The court may caution the accused as to the irrelevance of his defence, but should not, unless in special cases, stop his defence solely on the ground of irrelevance.

1. The prosecutor is an officer for securing that justice is done, not a partisan to obtain a conviction, independently of the justice of the case (see Ch. V, para. 57). Therefore he should prove, either by witnesses called for the purpose, or by the examination of his other witnesses, any facts which show the true character of the offence, whether they tend to aggravate or alleviate it, or to show the innocence of the accused, and he must be especially careful to prove any facts tending either to show the innocence of the accused, or to extenuate his offence. If, for example, the accused is charged with insubordinate language to his superior officer, and there are circumstances of provocation, which, if proved, might mitigate the punishment, though not justifying an acquittal, the prosecutor should call evidence to prove those circumstances.

Again, many acts are only offences when done knowingly or with a certain intent. *Prima facie* it lies on the prosecution to show that the accused had the guilty knowledge which constitutes the offence; but absolute proof of guilty knowledge or intent is frequently impossible, and it can only be inferred from the circumstances. This inference the court is at liberty to draw, unless the accused produces evidence to rebut it; but in this, as in every other case, all facts which tend to show either the existence or the absence of the intent or knowledge on the part of the accused must be brought out by the prosecutor. For example, if the accused is charged with desertion, and the prosecutor is aware that, though found in plain clothes, he had either received leave of absence, or leave to be in plain clothes, the prosecutor should prove that leave. So, too, if a soldier is charged with attempting to desert, and the evidence is that he went to a railway station and took a ticket for (say) Liverpool, and the fact is that several other soldiers in possession of passes took tickets for Liverpool at the same time, the latter fact should be brought out; as it gives a different complexion to the fact of taking a ticket, which of itself might be strong evidence against the accused.

The prosecutor must not introduce into the evidence against the accused any matters of aggravation which do not form part of the transaction in respect of which the accused is charged before the court, nor, as a rule, matters which, if true, are specific military offences with which the accused might be charged. If, for instance, he is charged with desertion, the prosecutor must not introduce, by way of aggravation, that he has been insolent or insubordinate, or that he had been previously drunk. On the other hand, if a soldier is charged with serious acts of insubordination, including violence to an escort, and the soldier was drunk, that fact should be brought out in the examination of the witnesses. Not only is the drunkenness part of the circumstances of the case, but it may modify the character of the offences, see Ch. III, para. 81; K.R., 575.

If the trial is in consequence of the accused having claimed a court-martial instead of submitting to the jurisdiction of his commanding officer, that fact should be stated by the prosecutor. See Form of Proceedings, para. (8), p. 682.

2. What is and what is not relevant to any charge is in some cases a matter of considerable difficulty (see Ch. VI., paras. 16-29); but in ordinary cases common sense will determine whether the matter referred to does or does not bear on the particular charge before the court (*ib.*). Anything which tends to show that the accused committed the offence mentioned in the charge, or to show the true character of the offence (see note 1 *sup.*), is, ordinarily speaking, relevant.

3. If any such comment is contained in a written address, it should be struck out and not read.

4. The right of the accused in making his defence is stated in this paragraph, and is not affected by his right to give evidence himself, whether he avails himself of that right or not. If his charge against other persons of blame or criminality is made merely for the purposes of his defence, and is in any degree justified by the facts, he will not incur liability; but if his charges against others are wholly irrelevant to his defence, or if they come within the provisions of A.A. 27 relating to false accusations, he is liable to be proceeded against accordingly. The court may caution him as to such liability, but should not do so if there is any connection whatever between the charge and his line of defence. The case must

be very special indeed to justify the court in stopping an accused person in his defence, or in excluding, on the ground of irrelevancy, evidence offered by him, or to justify any further proceedings against an accused person on account of his defence. The court should, however, caution him that if he so conducts his case as to throw discredit on the witnesses for the prosecution, he will, if he gives evidence himself, render himself liable to cross-examination as to character: see r. 80 and note.

Where a person tried for desertion made in his defence statements reflecting on the officers of the regiment as the reason for the prevalence of crime in the regiment, it was held that the defence, although the statements in it were eventually proved to be false, was not wholly irrelevant, as the accused might have hoped that the statements would lead to a mitigation of his punishment; and it was also held that the proper course was, not to try the offender again for the purpose of ascertaining the truth of his statements, but to hold a court of inquiry for that purpose.

Procedure on trial of accused persons together.

61. Where two or more accused persons are tried together and any evidence is tendered by any one or more of them, the evidence and addresses on the part of all the accused persons will be taken before the prosecutor replies, and the prosecutor will make one address only in reply as regards all the accused persons<sup>1</sup>.

1. See note to r. 71 (C). As to the effect of one accused person giving evidence against another charged with the same offence, see r. 80 (3) (O).

Separate charge-sheets.

62. (A) Where the convening officer directs any charges against an accused person to be inserted in different charge-sheets, the accused shall be arraigned, and until after the finding tried, upon each charge-sheet separately, and accordingly the procedure in Rules 31 to 44, both inclusive, shall, until after the finding, be followed in respect of each charge-sheet, as if it contained the whole of the charges against the accused<sup>1</sup>.

(B) The trials upon the several charge-sheets shall be in such order as the convening officer directs<sup>2</sup>.

(C) When the court have tried the accused upon all the charge-sheets they shall, in the case of the finding being "Not guilty" on all the charges, proceed as directed by Rule 45, and, in case of the finding on any one or more of the charges being "Guilty," proceed as directed by Rules 37 and 46 to 50, both inclusive, in like manner in each case as if all the charges in the different charge-sheets had been contained in one charge-sheet, and the sentence passed shall be of the same effect as if all the charges had been contained in one charge-sheet<sup>3</sup>.

(D) If the convening officer directs that, in the event of the conviction of an accused person upon a charge in any charge-sheet, he need not be tried upon the subsequent charge-sheets, the court in such an event may, without trying the accused upon any of the subsequent charge-sheets, proceed as directed by (c.)<sup>4</sup>.

(E) Where a charge-sheet contains more than one charge, the accused may, before pleading, claim to be tried separately in respect of any charge or charges in that charge-sheet, on the ground that he will be embarrassed in his defence if he is not so tried separately; and in such a case the court, unless they think his claim unreasonable, shall arraign and try the accused in like manner as if the convening officer had inserted the said charge or charges in different charge-sheets<sup>5</sup>.

(F) If the accused pleads "Guilty" to a charge in a charge-sheet, and the trial does not proceed (as mentioned in Rule 37 (A)) with respect to the other charges in that charge-sheet, the court shall, subject to the directions of the convening officer, proceed to try the accused on the charges in the next charge-sheet before they proceed as directed by Rule 27 (B) and (c.)<sup>6</sup>.

1. Most of the ordinary cases which come before courts-martial are so simple in their facts that an accused person is not embarrassed by being tried at the same time for several charges; but embarrassment will certainly arise if the facts of any of the charges are very complicated, or if the alleged offences were committed at different times, or if different sets of witnesses are required to prove the different offences. In such cases, even practised advocates and judges find a great difficulty in keeping the different charges and the evidence on each charge distinct, and still more will the difficulty be felt by a soldier and by a court not constantly accustomed, like a civil court, to deal with evidence.

In such cases, therefore, as a general rule, the convening officer should cause the charges to be inserted in separate charge-sheets.

The cases which are likely to arise may be classified as follows:—

Case No. 1. (Single offence repeated on different days.) The first case arises where the accused has been guilty of the same description of offence on two or more different days. *e.g.*, a soldier steals from a comrade a watch on Monday, a pair of shoes on Tuesday, a pair of stockings on Wednesday, and so forth. Supposing he had stolen all these articles at the same time, it would have constituted the same offence, but if he steals them on separate days, the offences are obviously distinct.

Case No. 2. (Several offences forming part of one wrongful transaction.) A more difficult case arises where the set of acts of which a person has been guilty are in fact part of one wrongful transaction, so to speak, and yet involve several military offences of different descriptions. *e.g.*, a soldier, being drunk, uses insubordinate language to his serjeant, knocks him down, and then absents himself. He commits four offences (1) drunkenness; (2) insubordinate language to his superior officer; (3) striking his superior officer; (4) desertion (or absence without leave.)

Case No. 3. (Several offences, not forming part of the same wrongful transaction.) Another case arises where several offences of different descriptions have been committed by the same person, but at different times. Such a case would arise if in the preceding case the desertion, or absence without leave, had taken place some time after the commission of the previous offences, and in such manner that they could not be deemed part of the same wrongful transaction.

In case No. 1, the offences being of the same description, may as a general rule, be contained in the same charge-sheet; but many offences of the same description should not be inserted in the same charge-sheet, as to do so might embarrass the accused in his defence. Usually it will be undesirable to insert more than three charges for offences of the same description in the same charge-sheet, unless the offences have been part of a system, as, for instance, a system of embezzlement carried on by the accused, in which case it may not be improper to increase the number of charges.

In case No. 2, four offences constitute one wrongful transaction, and therefore may be included in the same charge-sheet, but if they are so included, the accused must not at the same time be charged in the same charge-sheet with any previous offence of the same description; as, for instance, any previous offence of striking his superior officer, or of desertion, &c.

In case No. 3, if the accused is charged both with striking his superior officer and with desertion, or absence without leave, the latter offence should not be included in the same charge-sheet as the former.

In practice, in such an instance as case No. 2, the serious offences of striking a superior officer and of desertion or absence without leave, should alone be charged. Indeed, it is advisable as far as possible to avoid charging an accused person with more than one offence, as a multiplicity of charges leads to unnecessary trouble and confusion; and if the gravest of several offences is selected, the punishment will in all probability be sufficient to satisfy the ends of justice. It may, however, in some cases be necessary to prove several offences, in order to guide the court as regards the proper amount of punishment.

Assuming that it is doubtful whether one or more of a set of offences can be proved, it will of course be advisable to omit any offence the evidence with respect to which is doubtful, and to bring before the court those charges only of which the proof appears to be sufficient.

The result of the above remarks is as follows (see also Note as to use of Forms of Charges, p. 646):—

(M.L.)

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(i) Repeated instances of the same description of offence may be included in the same charge-sheet, though each instance must constitute a separate charge. (See, however, as to desertion and fraudulent enlistment, note to A.A. 12.)

(ii) Offences of different descriptions should be included in separate charge-sheets, except where they form part of the same wrongful transaction.

(iii) If offences of different descriptions are included in one charge-sheet as forming part of one wrongful transaction, any act other than an act which forms part of that wrongful transaction should not be charged as an offence in the same charge-sheet.

Where one offence has in fact been committed, but doubt arises as to what particular description of offence has been committed, one charge-sheet may include alternative charges for offences of different descriptions, but each charge will refer to the same set of particulars.

Where the accused is arraigned on charges in separate charge-sheets care must be taken that the trial proceeds upon each charge sheet separately until after the finding in each case.

2. The convening officer will regulate the order for the trial of different charge-sheets according to the gravity of the offence and the convenience of summoning the witnesses, or other circumstances. It is desirable to try first the gravest offence, as, if the accused is convicted, he will be sufficiently punished without trying him on the minor offences. In some cases, it may be better to try an accused person on a simple case first, so as to avoid the necessity, if he is convicted upon that, of trying him for an offence where the case is complicated, and the number of witnesses is large.

3. It will be observed, that the separation of charges in different charge-sheets is merely for the purpose of enabling the court and the accused to keep distinct in their minds the different cases and the evidence thereon, with a view to the accused making a proper defence, and the court arriving at a proper finding, without being confused by evidence on entirely distinct cases; and that the result, when the time for sentence is reached, is the same as if the accused had been tried at the same time on all the charge-sheets. Unless, therefore, the convening officer directs under (D) that the accused need not be tried upon the subsequent charge-sheets, the court will not sentence the accused until they have disposed of all the charge-sheets, and will then award one sentence in respect of all the charges contained in the different charge-sheets of which the accused has been found guilty.

4. It will often be unnecessary, if the accused is convicted of a grave charge contained in one charge-sheet, to proceed with any other or minor offences contained in the other charge-sheets; it may, however, in some cases be necessary to try the accused on a subsequent charge-sheet, in order to justify a more severe sentence for the offence charged in the first charge-sheet.

5. The court should always, unless they think the claim very unreasonable, accede to a demand to be tried separately in respect of any particular charge.

6. The object of this is only to provide that all the charge-sheets should be disposed of before the court proceed to sentence the offender; in the case of "Not guilty," this is provided for by (C).

Sitting in  
closed court.

**68. (A)** When a court-martial sit in closed court on any deliberation amongst the members or otherwise, no person shall be present except the members of the court, the judge-advocate, and any officers under instruction; and the court may either retire or may cause the place where they sit to be cleared<sup>1</sup> of all other persons not entitled to be present.

**(B)** Except as above-mentioned, all the proceedings, including the view<sup>2</sup> of any place, shall be in open court<sup>3</sup> and in the presence of the accused.

1. See A.A. 53 (5).

2. See A.A. 53 (7). All the members must proceed to view any place, and the accused must be present there; usually the court will adjourn for the purpose to the place to be viewed.

3. This does not control the power of the court to exclude a person who interferes with the proceedings—a power incident to every court as necessary for the proper conduct of the proceedings, though it does not extend to the exclusion of the accused, as the trial cannot proceed in his absence.

64. (A) A court-martial may sit at such times and for such period between the hours of six in the morning and six in the afternoon, as may be directed by the proper superior military authority, and so far as no such direction extends, as the court from time to time determine<sup>1</sup>. Time for trial.

(B) If the court consider it necessary to continue a trial after six in the afternoon they may do so, but if they do so should record in the proceedings their reason for so doing.

(C) In cases requiring an immediate example, or when the convening officer, or the general or other officer commanding any body of troops, certifies<sup>2</sup> under his hand that it is expedient for the public service, trials may be held at any hour.

(D) If the court or the convening officer, or other superior military authority, think that military exigencies or the interests of discipline require the court to sit on Sunday, Christmas Day, or Good Friday, the court may sit accordingly<sup>3</sup>, but otherwise the court should not sit on any of those days.

1. See K.R., 579, and r. 65 and note.

2. This certificate should be annexed to the proceedings.

3. The reason for sitting should be annexed to, or entered in, the proceedings.

65. (A) When a court is once assembled and the accused has been arraigned, the court should (but subject to the provisions of the Army Act<sup>1</sup>, and of these rules as to adjournment<sup>2</sup>) continue the trial from day to day and sit for a reasonable period<sup>3</sup> on every day<sup>4</sup>, unless it appears to the court that an adjournment is necessary for the ends of justice, or that such continuance is impracticable. Continuity of trial and adjournment of court.

(B) A court-martial in the absence either of a president<sup>5</sup>, or of a judge-advocate (if a judge-advocate has been appointed for that court-martial), shall not proceed, and if necessary shall adjourn.

(C) The senior officer on the spot may also, for military exigencies<sup>6</sup>, adjourn or prolong the adjournment of the court.

(D) Any adjournment may be made from place to place<sup>7</sup> as well as from time to time. If the time to which the adjournment is made is not specified, the adjournment will be until further orders from the proper military authority; if the place to which the adjournment is made is not specified, the adjournment will be to the same place or to such place as may be specified in further orders from the proper military authority.

1. A.A. 53 (6) authorises the court to adjourn from time to time without any restriction. It is, however, very important that a trial by court-martial, once begun, should proceed with strict regularity and without interruption, to its conclusion. This rule, therefore, requires the court to sit continuously from day to day, unless it is impracticable to do so, or unless an adjournment is necessary for the ends of justice.

Thus the court may adjourn on account of the illness of the accused, or for the purpose of viewing any place, or of securing the attendance of witnesses (see r. 79), or of obtaining evidence from recusant witnesses, or of obtaining the opinion of the Judge-Advocate-General, or for reference to the convening or confirming officer on any question, or for any purpose, if the court are of opinion that such adjournment is necessary for the ends of justice; see note to r. 76. The court, however, should not as a rule permit an adjournment for the purpose of obtaining further evidence on the part of the prosecution, and should only adjourn for the production of evidence for the accused, where they consider that he has not previously had sufficient opportunity for procuring his witnesses, or where it would be unjust to the accused not so to adjourn. Great care must be taken, both by the prosecutor and by the accused, to have ready at the trial all the witnesses and documents they desire respectively to produce. The court should adjourn, if an adjournment is requested by the accused to prepare his defence, by the prosecutor to prepare his reply, or by the judge-advocate to prepare his summing-up.

In the event of the illness of a member, the court may, if not reduced below its legal minimum, either proceed without him, or adjourn, as they think proper; but if reduced below the legal minimum, r. 66 applies.

When a court adjourns before the conclusion of the trial, the adjournment is to be entered in the proceedings (see Form of Proceedings, para. (5), p. 685), and either announced in court in the presence of the accused, or communicated to the prosecutor and accused.

2. See r.r. 14 (D), 18, 22 (C), 23 (B), 25 (G), 33 (B), 34 (C), (D), 44 (E), (F), 65 (B), (C), (D), 67, 76, 79, 102.

3. Sittings of six or seven hours will be found, as a rule, quite long enough, and they should not be further protracted without some special reason; K.R., 579. Too long sittings unduly strain the attention of the members, and may operate unfairly to the accused, as at the close of a long sitting he cannot properly make his defence.

4. Except Sunday, &c., see r. 64 (D).

5. If the president dies, or is unable to attend, the convening authority may appoint the senior member of the court (being of sufficient rank) to be president, assuming the court not to be reduced below the legal minimum. If he is not of sufficient rank, the court will be dissolved; A.A. 58 (2). Where the inability of the president to attend is merely temporary, no new appointment will be necessary, and the court will adjourn till he is able to attend. The senior member will always report the fact of the death, or inability to attend, of the president, to the convening authority; r. 66 (A).

6. These can seldom occur, except on active service.

7. This meets the case of a view, as well as of a court-martial held on the line of march; also the case of adjournment to the quarters of a sick witness, for the purpose of taking his evidence.

#### Suspension of trial.

66. (A) Where, in consequence of anything arising while the court are sitting<sup>1</sup>, the court are unable by reason of dissolution<sup>2</sup> (as specified in section 53 of the Army Act, or otherwise), or of the absence of the president, to continue the trial, the president, or in his absence, the senior member<sup>3</sup> present, will immediately report the facts to the convening authority<sup>4</sup>.

(B) Where a court-martial is dissolved before the finding, or, in case of a finding of guilty, before the sentence, the proceedings are null, and the accused may be tried before another court-martial.

1. Anything which occurs while the court are not sitting will usually be reported in some other way to the convening authority; if not, it should be reported as directed by this rule.

2. A court is dissolved if, after the commencement of the trial, the court is, by death or otherwise, reduced below the legal minimum (see notes to r.r. 17-19); or if, on account of the illness of the accused before the finding (see next rule), it is impossible to continue the trial; or if, on the failure of the president, a new president cannot be appointed; A.A. 58 (1) (2) (3).

3. *I.e.*, senior according to the rank in which they take their seats; see r. 58.

4. For form see Form of Proceedings, para. (5), pp. 685, 686.

#### Proceeding on death or illness of accused

67. In case of the death of the accused or of such illness of the accused as renders it impossible to continue the trial, the court will ascertain the fact of the death or illness by evidence<sup>1</sup>, and record the same, and adjourn, and transmit the proceedings to the convening authority.

1. See A.A. 53 (3) and note. This evidence will be taken on oath or solemn declaration, in the same manner as on the trial.

#### Presence throughout of all members of court.

68. (A) A member of a court who has been absent while any part of the evidence on the trial of an accused person is taken can take no further part in the trial by that court of that person, but the court will not be affected except as provided by section 53 of the Army Act<sup>1</sup>.

(B) An officer cannot be added to a court-martial after the accused has been arraigned<sup>2</sup>.



1. That is, unless it is reduced below the legal minimum, and so dissolved under 53 A.A.

2. See Ch. V, para. 49.

69. (A) Every member of a court must give his opinion on every question which the court has to decide, and must give his opinion as to the sentence, notwithstanding that he has given his opinion in favour of acquittal. Taking of opinions of members of court.

(B) Subject to the provisions of the Army Act<sup>1</sup>, every question shall be determined by an absolute majority<sup>2</sup> of the opinions of the members of the court, and in the case of an equality of opinions the president's second or casting vote will be reckoned as determining the majority.

(C) The opinions of the members of the court should be taken in succession, beginning with the junior in rank<sup>3</sup>.

1. See A.A. 48 (8), 53 (8), and 51 (3) and (5).

2. Otherwise a punishment might be imposed by a minority. For instance, if the punishment proposed by four members was penal servitude, by three imprisonment, and by two a forfeiture, the penal servitude might be imposed, although five members were opposed to it. In order to obtain the absolute majority, it will be desirable first to take the opinion of the members of the court as to the nature of the punishment to be awarded, that is to say, penal servitude, imprisonment, detention, cashiering, forfeiture, or other punishment.

Where opinions differ as to the nature of punishment, the most lenient should be put first, then the next most lenient, and so forth, the most severe being put last. Any member who is in favour of the most lenient punishment, if overruled, will, of course, give his opinion in favour of the next most lenient, and will not oppose this because he is desirous of having the punishment still more lenient.

For example, if the court consist of nine members, of whom four are in favour of penal servitude, three of imprisonment, and two of a forfeiture, the forfeiture will be put first to the court, and when negatived, the imprisonment will be put next. The members who were in favour of forfeiture will, of course, vote for imprisonment as against penal servitude, and thus five votes will be given in favour of imprisonment, being an absolute majority of the court.

When the nature of the punishment has been determined, the quantum of punishment must be ascertained; that is to say, in the case of imprisonment or detention, the number of months or days of imprisonment or detention.

As before, the most lenient proposal will be put first, and a member who is in favour of the shortest term of imprisonment will, of course, support the next shortest term, rather than support a longer term, and will not give his opinion against the next shortest term merely because he desires to have a term shorter still.

For example, if in a court of nine members two members desire to award 84 days' imprisonment, two others 112 days', another six months', and the other four ten months, the 84 days' will be put first, and, when negatived, the 112 days' will be put next, and will be supported by the members who wished for 84 days, but will be opposed by the members who desire a longer term. The six months will next be put, and will be supported by those who desire to award 84, and 112 days, so that the ultimate sentence will be six months' imprisonment.

It is not a proper course of proceeding to take the terms of imprisonment or other punishment proposed by each member, and strike an average; but naturally in the course of discussion among the members of the court, some punishment intermediate between the most severe and most lenient punishment proposed by the different members will usually be arrived at, without necessarily resorting to actual voting, as in the above examples.

3. The opinion of each member is taken separately on each charge; r. 48 (B). If there is a judge-advocate, the opinions are taken by him; if there is not, then by the president.

The oath taken by the members of the court operates, as a general rule, to prevent the opinions of individual members being disclosed; see note 2 to A.A. 52 (1). "Junior in rank" means junior in the rank in which they take their seats.

Procedure  
on inci-  
dental  
question.

70. If any question<sup>1</sup> should arise incidentally during the trial, the person, whether prosecutor or accused, requesting the opinion of the court is to speak first; the other person is then to answer, and the first person is to be allowed to reply.

1. This rule will apply to such questions as the admissibility of evidence, the propriety of any question, or the recalling of a witness.

Swearing of  
court to try  
several  
accused  
persons.

71. (A) A court may be sworn at the time to try any number of accused persons then present before it, whether those persons are to be tried together or separately, and each accused person shall have power to object to the members of the court, and shall be asked separately whether he objects to any member<sup>1</sup>.

(B) In the case of several accused persons to be tried separately, the court, upon one of those persons objecting to a member, may, according as they think fit, proceed to determine that objection or postpone the case of that person, and swear the members of the court for the trial of the others alone<sup>2</sup>.

(c) In the case of several accused persons to be tried separately, the court, when sworn, shall proceed with one case, postponing the other cases, and taking them afterwards in succession<sup>3</sup>.

1. Under this rule it will not be necessary, where there are several accused persons to be tried separately, to go through the process of swearing the court for each, but all the accused may be brought up together, and the proceedings for objections to and swearing the members (see r.r. 25 to 30) may be gone through for all the accused at the same time. After the members are sworn, those persons who are not then to be tried will be removed. This course of procedure will not affect the position of the court, which will, as heretofore, be a separate court for the trial of each case, and, as heretofore, the swearing of the court will be mentioned in the proceedings of each separate case.

2. It need hardly be observed that when, in consequence of an objection by one accused a new officer serves, the other accused persons who before made no objection to the court will have the right to object to the new officer.

3. It is obvious that in the case of several accused persons being tried together, each person will be called on separately to plead and make his defence, and a finding must be arrived at separately for each person accused; and each person accused found guilty must be separately sentenced, and a separate record accordingly will be made in the proceedings. It may be proper to make a distinction between the sentences of persons found guilty of the same offence, having regard to rank, character, degree of criminality, or other considerations.

Swearing of  
interpreter  
and short-  
hand  
writer.

72. (A) At any time during the trial an impartial person may, if the court think it necessary, and shall, if either the prosecutor or the accused requests it on any reasonable ground, be sworn to act as interpreter<sup>1</sup>.

(B) An impartial person may at any time of the trial, if the court think it desirable, be sworn to act as a shorthand writer<sup>1</sup>.

(c) Before a person is sworn as interpreter or shorthand writer, the accused should be informed of the person who is proposed to be sworn, and may object<sup>2</sup> to the person as not being impartial; and the court, if they think that the objection is reasonable, shall not swear that person as interpreter or shorthand writer.

1. It will often be convenient to swear a shorthand writer and interpreter at the same time as the members and officers of the court are sworn, but this is not obligatory. For form of oath and solemn declaration see r.r. 27 and 28. For remarks on employment of interpreter, see Ch. V, para. 70.

2. Any objection made by the accused to the interpreter or shorthand writer will be dealt with in the same way as an objection to a member of the court. The court should, if the accused requests it, allow him to give evidence himself or to call witnesses in support of the objection. Any objection which appears to the court to have any foundation should, as a rule, be allowed.

*General Provisions as to Witnesses and Evidence.*

73. (A) A court-martial shall not receive evidence for the prosecution, which is not relevant<sup>1</sup> to the facts stated in the statement of particulars in the charge, or any evidence which is not admissible either according to the rules of civil courts in England, or under the Army Act<sup>2</sup>, or under any other Act of the Parliament of the United Kingdom.

Evidence to be relevant and according to rules in English courts.

(B) The rules of evidence adopted in civil courts in England, including those contained in the Criminal Evidence Act, 1898, will be followed by courts-martial<sup>3</sup>, and objections to any question to a witness or to the admission of any evidence may be made accordingly, and a person will not be required to answer any question or produce any document which he could not be required to answer or produce in a like proceeding before a civil court in England.

(C) By "civil court" in this rule is meant a court of ordinary criminal jurisdiction in England, including a court of summary jurisdiction.

1. With respect to the relevancy of evidence, see the note on r. 60 (B) and as to relevancy and inadmissibility of evidence generally, see Ch. VI, paras. 15-81.

2. See A.A. 163-165.

3. A.A. 128 directs courts-martial to follow the rules of evidence which are followed in civil courts in England. Moreover, A.A. 127 expressly lays down that courts-martial are not to be subject in any respect to any Indian, colonial, or foreign statute law or ordinance.

The Criminal Evidence Act 1898 enables the accused and his wife to give evidence like other witnesses, subject to certain conditions, as to which see r. 80 and note. Subject to the provisions of that rule the rules of evidence applicable to other witnesses will equally apply to the evidence of the accused.

74. The court may take judicial notice<sup>1</sup> of all matters of notoriety, including all matters within their general military knowledge.

Judicial notice.

1. As to meaning of "judicial notice" see Ch. VI, paras. 10, 11.

75. The prosecutor is not bound to call all the witnesses whose evidence is in the summary of evidence, or in the abstract of evidence given to the accused<sup>1</sup>, but he should ordinarily call such of them as the accused desires to be called, in order that the accused may, if he thinks fit, cross-examine them, and the prosecutor should for this reason, so far as seems to the court practicable, secure the attendance of all such witnesses<sup>2</sup>.

Calling of all prosecutor's witnesses.

1. The object of this rule is to enable the prosecution to proceed, although some witness is not available, and the rule is not intended to absolve the prosecutor from the responsibility of proving his case, or of calling all the available witnesses who can give material evidence (see note to r. 60), and, as a rule, the whole case as it appears in the summary of evidence should be proved by the prosecutor. If the case fails from the prosecutor not calling any available witness, or not asking any necessary questions of a witness, he becomes personally responsible to the convening officer.

2. As the cross-examination of a witness for the prosecution may be most material for the purposes of the defence, a prosecutor should always have all his witnesses present. Failure to produce a material witness for cross-examination might invalidate the proceedings. Any witness whose evidence is in the summary or abstract of evidence, and whom the accused asks to have called, should be called by the prosecution.

76. If the prosecutor intends to call a witness whose evidence is not contained in any summary or abstract given to the accused<sup>1</sup>, notice of the intention shall be given to the accused a reasonable time before the witness is called; and if the witness is called without such notice having been given, the court shall, if the accused so desire it, either adjourn after taking the evidence of

Calling of witness whose evidence is not contained in summary or abstract.

the witness, or allow the cross-examination of the witness to be postponed, and the court shall inform the accused of his right to demand such an adjournment or postponement<sup>2</sup>.

1. Where no summary or abstract has been delivered (as *e.g.*, on suspension, under r. 104 of r. 5) this rule will apply to every witness.

2. The court are, under r. 86 (D), justified in calling of their own motion a witness not produced by the parties, if they consider it necessary for the ends of justice, but this power should be sparingly exercised.

List of  
witnesses  
of accused.

**77.** The accused shall not be required to give to the prosecutor a list of the witnesses whom he intends to call, but it shall rest with the accused alone to secure the attendance of any witness whose evidence is not contained in the summary or abstract, and for whose attendance the accused has not requested steps to be taken as provided for by Rule 14 (A).<sup>1</sup>

1. The prosecutor may be called as a witness for the defence. The judge-advocate, though not competent as a witness for the prosecution, may be called for the defence. A member of a court-martial is a competent witness for the defence, but not for the prosecution (Army Act, 50 (8)); and may be sworn at any stage of the proceedings; but it is desirable to avoid placing officers on courts-martial whose evidence is likely to be required. It need scarcely be observed that a member, if called on to give evidence, must be sworn like other witnesses in open court, and be subject to cross-examination, and that he does not cease in any respect to be a member of the court.

Procuring  
attendance  
of wit-  
nesses.

**78. (A)** The convening officer, or, after the assembly of the court the president, shall take the proper steps to procure the attendance of the witnesses whom the prosecutor or accused desires to call, and whose attendance can reasonably be procured<sup>1</sup>, but the person requiring the attendance of a witness may be required to undertake to defray the cost<sup>2</sup> (if any) of his attendance.<sup>3</sup>

(B) Any such witness who is not subject to military law may be summoned to attend by order under the hand of the convening officer, the president of the court, the judge-advocate, or the commanding officer of the accused.<sup>4</sup>

(C) Any such witness who is subject to military law shall be ordered to attend by the proper military authority.<sup>5</sup>

1. The words, "whose attendance, &c.," prevent an accused person from having any technical ground of complaint in case a distant witness whom he requires is not procured; but it is the duty of the officer (whether the convening officer or the president) to secure the attendance of every witness whom there is any ground to suppose to be material for the defence, and the court should adjourn, if necessary, for the purpose; see r. 79.

2. This power is given in order to prevent accused persons or prosecutors demanding unreasonably the attendance of witnesses. In the case of the prosecutor, the cost would usually be defrayed as part of the expenses of the prosecution. In the case of the accused, this provision should not be allowed to interfere with the calling of a witness who appears to be material. The absence of a material witness may be held afterwards to invalidate the proceedings of the court-martial, even though, if the witness had been called, the court would probably have arrived at the same decision, inasmuch as it is impossible to tell what effect the evidence of such a witness might have had on the court.

See generally as to expenses of witnesses, the Army Allowance Regulations. 3. If a witness has in his possession, or under his control, any books, accounts, letters, returns, papers, or other documents which are thought necessary for the trial, care must be taken, in summoning him, to require him to bring them with him; as he would be justified in declining to acknowledge a mere verbal request.

As to the mode of applying for the attendance of military witnesses from distant stations, see K.R., 571.

If a civil witness who has been duly summoned, and whose expenses have been tendered, does not attend, the court should take evidence on oath

as to the service of the summons and the tender of expenses. The President should then forward a certificate through the convening officer to the Army Council reciting the facts, and attaching a certified extract from the proceedings.

4. A witness summoned or ordered to attend before a court-martial has the same privilege from arrest as a witness before one of the superior civil courts. See A.A. 125 (2) and note. If a witness not subject to military law makes default in obeying a summons after payment or tender, of his expenses, he can be punished by a civil court; A.A. 126, 180 (1). Any such witness, if abroad, cannot be compelled to attend a court-martial in the United Kingdom.

For Form of Summons, see pp. 699, 700.

5. Disobedience to any such order is punishable under A.A. 28 (1).

There is no rule of law which exempts the governor or the general commanding in a colony from giving evidence; but regard must be had to the dignity of his office, and it is clear that he would be justified in declining to answer questions respecting confidential official correspondence, and like matters, on grounds of public policy. (See Ch. VI, paras. 95-98.)

79. If such proper steps as mentioned in the preceding rule have not been taken as to any witness, or if any witness whose attendance could not be reasonably procured before the assembly of the court is essential to the prosecution or defence, the court shall adjourn and report the circumstances to the convening officer. Adjournment of court for non-attendance of witnesses.

80.—(1) Subject to the provisions of Rule 40,<sup>1</sup> an accused person may at any stage of any proceedings at which under these rules evidence for the defence may be given, apply to give evidence as a witness for the defence himself, or to have his wife called as a witness for the defence, but neither the accused nor his wife shall be called as a witness, except on the application of the accused.<sup>2</sup> Evidence of the accused and his wife.

(2) The accused giving evidence shall, unless otherwise ordered by the Court, give his evidence from the witness box or other place from which the other witnesses give their evidence.<sup>3</sup>

(3) An accused person giving evidence may be asked any question in cross-examination,<sup>4</sup> notwithstanding that it would tend to criminate him as to the offence charged, but shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—

- (A) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged<sup>5</sup>; or
- (B) he has personally or by his counsel or officer acting as counsel asked questions of the witnesses for the prosecution with a view to establish his own good character or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor, or the witnesses for the prosecution<sup>6</sup>; or
- (C) he has given evidence against any other person charged with the same offence.

(4) The wife of an accused person shall not be compelled to disclose any communication made to her by her husband during the marriage.

1. The provisions of r. 40 referred to are those relating to the time at which the accused is to give his evidence if he is the only witness to facts called by the defence.

2. The rule that the wife of an accused person may not be called except as a witness for the defence, and on the application of the accused, is subject to two exceptions: (1) where the offence is an offence under an enactment mentioned in the schedule to the Criminal Evidence Act, 1898; (2) where the wife of an accused person may be called as a witness by common law. (As to these exceptions, see Ch. VI, para. 86.)

3. If the accused is violent, it may be impossible for the court to allow him to give his evidence from the place from which other witnesses give their evidence; but, except in such cases, the accused should always while he is giving evidence be treated like any other witness, but he will remain under escort while giving evidence.

4. If the accused refuses to answer a question put to him in cross-examination, and the question is one which another witness would be required to answer, and is not a question which an accused person is under this rule specially exempted from answering, he may be charged, like any other witness, with an offence under A.A. 28 (4).

5. See Ch. VI, para. 93A.

6. It will be for the court to decide whether or not the accused has done anything to render himself liable to be cross-examined as to character under this provision. If there is any doubt on the point, their decision should be in favour of the accused. If an accused person is conducting his case in such a manner as to render himself liable to be cross-examined as to character, the court should warn him of the consequences. See Ch. VI, para. 93A.

If the accused has given evidence against another person charged with the same offence, that other person may cross-examine him as to character.

It must, however, be remembered that in no case may a question be put to an accused person which would be inadmissible in the case of another witness; see r. 92 (B).

Withdrawal  
of witnesses  
from court.

81. During the trial a witness other than the prosecutor or accused ought not, except by special leave of the court, to be in court while not under examination, and if while he is under examination a discussion arises as to the allowance of a question, or the sufficiency of his answers, or otherwise as to his evidence, he may be directed to withdraw.<sup>1</sup>

1. As the trial begins with the arraignment of the accused, any witnesses in court should be ordered to withdraw before he is arraigned. If any such discussion as is mentioned in the rule arises, the court should generally order the witness to withdraw, as the discussion might influence his answer. But the accused, whether he intends to give evidence himself or not, must always be present, except when the court is closed for the discussion of any question arising in the course of the trial, or for the deliberation on the finding or sentence of the court (see r. 63). As to an accused person giving evidence after hearing the evidence of the other witnesses for the defence, see note to r. 41 (B).

Swearing of  
witnesses.

82. (A) Every witness, before he gives his evidence, shall be sworn by the judge-advocate, or by the president, or by a member of the court.<sup>1</sup>

(B) The form of oath for a witness shall be as follows:—

"The evidence which you shall give before this court shall be the truth, the whole truth, and nothing but the truth.

So help you GOD."

(c) Rule 30 shall apply to every witness.

(d) Where a witness is permitted to make a solemn declaration instead of being sworn,<sup>2</sup> the declaration may be made before a person authorised to administer the oath, and the form of declaration shall be as follows:—

\_\_\_\_\_, do solemnly promise and declare that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth."

1. See A.A., 52 (3). As to mode of administration of the oath, see r. 30 and note. As to swearing the prosecutor as a witness, see note



on r. 46 (B). As to power of dealing with recalcitrant witnesses, see A.A. 28 (in the case of persons subject to military law) and 126 (in other cases).

2. A solemn declaration is allowed to be made in the circumstances mentioned in A.A. 52 (4).

**83. (A)** Every question may be put to a witness orally by the prosecutor, accused, or judge-advocate, without the intervention of the court,<sup>1</sup> and the witness will forthwith reply, unless an objection is made by the court, judge-advocate, prosecutor, or accused, in which case he will not reply until the objection is disposed of. Mode of questioning witnesses.

(B) The evidence of a witness as taken down should be read to him<sup>2</sup> after he has given all his evidence and before he leaves the court, and such evidence may be explained or corrected by the witness at his instance. If he makes any explanation or correction, the prosecutor and accused may respectively examine him respecting the same.

(C) In the case of a general court-martial at which a shorthand writer is employed, it shall not be necessary to comply with rule 83 (B), if in the opinion of the court and the judge-advocate (such opinion to be recorded in the proceedings) it is inexpedient to do so, but nevertheless, if any witness so desires, rule 83 (B) shall be complied with.

1. As under this rule every question may be put to a witness without being previously written down and submitted for the approval of the president or the court, the court and the judge-advocate, as well as the prosecutor, will have to attend to questions put, so as to object, if necessary, to the question, before the witness replies to it.

2. When the evidence of a witness has been read to him, he should be asked whether it is correct. Any material alteration or explanation should be inserted at the end, and not by way of interlineation or erasure. See Form of Proceedings, paras. (6) and (7), pp. 687, 688.

**84. (A)** A witness may be examined by the person calling him, and may be cross-examined by the opposite party to the proceeding, and on the conclusion of the cross-examination may be re-examined by the person calling him on matters raised by the cross-examination.<sup>1</sup> Examination and cross-examination.

(B) The court may, if they think fit, allow the cross-examination of a witness to be postponed.<sup>2</sup>

1. See Form of Proceedings, paras. (5) (6) (7) (8) pp. 684-690, and Ch. VI, paras. 104-119.

2. The court should, if the accused requests it, allow the cross-examination of a witness to be postponed, unless the request appears to be made for the purpose only of obstruction.

**85. (A)** At any time before the time for the second address<sup>1</sup> of the accused, the judge-advocate, and any member of the court, may, with the permission of the court, address through the president any question to a witness.<sup>2</sup> Questions to witness by members of court or judge-advocate.

(B) Upon any such question being answered, the president shall also put to the witness any question relative to that answer which he may be requested to put by the prosecutor or the accused, and which the court deem reasonable.<sup>3</sup>

1. See r. 41 (C).

2. *I.e.* any question which might have been put to the witness when first called. Any question put by a member of the court or judge-advocate will ordinarily be more conveniently put after the examination of the witness by the prosecutor and the accused is concluded, but before any other witness is called.

3. The court should always, under the power given by this rule, ask a witness any question which they are requested by the prosecutor or the accused to ask, and which does not seem unreasonable.

Re-calling  
of wit-  
nesses,  
and calling  
of witnesses  
in reply.

86. (A) At the request of the prosecutor or accused person a witness may, by leave of the court, be re-called at any time before the time for the second address<sup>1</sup> of the accused for the purpose of having any question put to him through the president.<sup>2</sup>

(B) A witness may, in special cases, be allowed by the court to be called or re-called by the prosecutor before the time for the second address of the accused, for the purpose of rebutting any material statement made by a witness for the defence<sup>3</sup> upon his examination by the accused on any new matter which the prosecutor could not reasonably have foreseen.

(C) Where the accused has called witnesses as to character, the prosecutor before the time for the second address of the accused may call or re-call witnesses for the purpose of proving a previous conviction or entries in the conduct book against the accused.

(D) The court may call or re-call any witness at any time before the finding, if they consider that it is necessary for the ends of justice.<sup>4</sup>

1. See r. 41 (c).

2. The president should also put to the witness any question relevant to the answer given which, if the witness was re-called at the request of the prosecutor, the accused, or if he was re-called at the request of the accused, the prosecutor, requests him to put.

As to the meaning of "any question," see note 2 to r. 85.

If an accused person has given evidence, the court may recall him without any application from the accused.

3. This will include the accused himself when he has given evidence.

4. The power of calling a new witness should only be exercised by the court in cases of unforeseen witnesses becoming available, or of some exceptional circumstances, and should not be exercised to supplement any negligent conduct on the part of the prosecution. If a new witness is called, the court should ordinarily allow him to be cross-examined by the other parties. If a witness is re-called, the questions asked should be limited to one or two questions relating to the evidence previously given by that witness.

It is very desirable that no witness should be called or re-called after the second address of the accused. Otherwise some irregularity is introduced into the proceedings, because if new matter is introduced by such witness it is necessary for the court, if so requested, to allow the prosecutor and the accused respectively to call witnesses in reply, and the accused to address the court with respect to such evidence, and the judge-advocate to supplement his summing up by a reference to such evidence. This remark, however, will not apply where the questions put to a witness re-called are limited as before suggested.

### *Friend of Accused and Counsel.*

Accused  
may have a  
person to  
assist him  
on trial.

87. (A) An accused person may have a person to assist him during the trial, whether a legal adviser or any other person.<sup>1</sup>

(B) A person so assisting him may advise him on all points, and suggest the questions to be put to witnesses; and, if an officer subject to military law, shall have the same rights and duties as counsel have under these rules, and the right of the accused shall be limited in like manner.<sup>2</sup>

1. No person other than an officer subject to military law can, unless as counsel (as defined in r. 93 (B)), under any circumstances, either examine witnesses orally or address the court, though he may be present in court and aid the accused.

2. The court should not allow the accused to address them in addition to his counsel, or officer acting as counsel, except as a witness or as prescribed by r. 94 (A).

The accused will, of course, be allowed every facility for communicating with his friend, whether a military man or counsel or not.

88. (A) Subject to these rules, counsel<sup>1</sup> shall be allowed to appear on behalf of the prosecutor and accused at general and district courts-martial :

Counsel allowed in certain courts-martial.

- (1) When held in the United Kingdom ; and
- (2) When held elsewhere than in the United Kingdom or India, if the Army Council or the convening officer, and when held in India, if the Commander-in-chief of the forces in India, or the convening officer, declares that it is expedient to allow the appearance of counsel thereat, and such a declaration may be made as regards all general and district courts-martial held in any particular place, or as regards any particular general or district court-martial, and may be made subject to such reservation as to cases on active service, or otherwise, as seems expedient.

(B) Save as provided in Rule 87, the rules with respect to counsel will apply only to the courts-martial at which counsel are, under this rule, allowed to appear.

1. No one can appear as counsel unless he is a barrister or solicitor or otherwise qualified as provided by r. 93. There is no restriction on the number of counsel.

A person acting as a counsel, though not bound to such strict impartiality as the prosecutor, must still recollect that he is assisting in the administration of justice, and must not be guilty of any unfairness or want of candour. In his address, however, he will have the same liberty as the accused; see r. 60 (O); but he must be even more guarded in referring to the conduct of persons not before the court.

89. (A) Where an accused person gives notice of his intention to have counsel to assist him during the trial, either on the day on which he is informed of the charge or at any time not being less than seven days before the trial, or such shorter time before the trial as in the opinion of the court would have enabled the prosecutor to obtain, if he had thought fit, counsel to assist him during the trial, and would have enabled the authority appointing a judge-advocate to appoint counsel to act as judge-advocate at the trial, or where such notice as mentioned in (B) is given to the accused on the part of the prosecution, counsel may appear at the court-martial to assist the accused.

Requirements for appearance of counsel.

(B) If the convening officer so directs, counsel may appear on behalf of the prosecutor, but in that case, unless the notice in (A) has been given by the accused, notice of the direction for counsel to appear shall be given to the accused at such time (not in any case less than seven days) before the trial, as would, in the opinion of the court, have enabled the accused to obtain counsel to assist him at the trial.

(C) The counsel who appears before a court-martial on behalf of the prosecutor or accused, shall have the same right as the prosecutor or accused for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the court, to put in any plea, and to inspect the proceedings, and shall have the right otherwise to act in the course of the trial in the place of the person on whose behalf he appears, and he shall comply with these rules as if he were that person; and in such a case that person shall not have the right himself to do any of the above matters except as regards the statement allowed by Rule 94 or except so far as the court permit him so to do.

(D) When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined and re-examined as any other witness, and Rule 39 (c) and (d) shall not apply.

Counsel for  
prosecu-  
tion.

90. (A) The counsel for the prosecution should always make an opening address, and should state therein the substance of the charge against the accused, and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into unnecessary detail.

(B) The counsel appearing on behalf of the prosecutor shall have the same duty as the prosecutor, and is subject to be stopped and restrained by the court in the manner provided by Rule 60 (B).

Counsel for  
accused.

91. (A) The counsel appearing on behalf of the accused has the like rights and is under the like obligations as are specified in Rule 60 (c) in the case of the accused.

(B) If the court ask the counsel for the accused a question as to any witness or matter, he may decline to answer, but he must not give to the court any answer or information which is misleading.

General  
rules as to  
counsel.

92. (A) Counsel, whether for the prosecution or for the accused, will conform strictly to these rules and to the rules of civil courts in England relating to the examination, cross-examination, and re-examination of witnesses, and relating to the duties of counsel.

(B) If counsel puts to a witness a question as to a matter which is not relevant except so far as it affects the credit of the witness by injuring his character, and the witness objects to answering the question, the court shall consider whether the witness should be compelled to answer it<sup>1</sup>; and

(1) If they are of opinion that the imputation conveyed by the question would, if true, seriously affect their opinion as to the credibility of the witness, the court should require the witness to answer the question; but

(2) If they are of opinion that the imputation, if true, would not affect, or would not seriously affect the opinion of the court as to the credibility of the witness, the court should disallow the question.

If the question is disallowed, counsel on both sides will refrain from further examining or commenting on the matter.

(c) Counsel will not state as a fact any matter which is not proved, or which he does not intend to prove in evidence.

(d) Counsel will not state what is his own opinion as to any matter of fact before the court.

(E) Counsel will not, in a question to any witness, assume that facts have been given in evidence which have not been given in evidence, or that particular answers have been given contrary to the fact.

(F) Counsel will treat the court and judge-advocate with due respect, and shall, while regarding the exigencies of his case, bear in mind the requirements of military discipline in the respectful treatment of any superior officer of the accused who may attend as a witness.

1. If the question is put to the accused, the court will also have to consider whether, having regard to r. 80, he should be compelled to answer it.

**93. (A)** Neither the prosecutor nor the accused has any right to object to counsel, if properly qualified. Qualification of counsel.

(B) Counsel shall be deemed properly qualified—

- (1) If in England or Ireland he is a barrister-at law or solicitor.
- (2) If in Scotland he is an advocate or law agent.
- (3) If in India he is a barrister-at-law or is a legal practitioner authorised to practise, with right of audience, in a court of sessions.
- (4) If in any other part of His Majesty's dominions he is recognised by the convening officer as having in that part rights and duties similar to those of a barrister-at-law in England and as being subject to punishment or disability for a breach of professional rules.

**94. (A)** If an accused person assisted by counsel, or by an officer subject to military law, does not wish to give evidence on his own behalf, he may, if he thinks fit, at the close of the case for the prosecution and before the address by such counsel or officer, make a statement giving his account of the subject of the charges against him. The statement may be made either orally or in writing, but the accused making the statement shall not be sworn, and no question can be put to him by the court or by any other person<sup>1</sup>. Statement by accused defended by counsel or officer.

(B) If the accused makes such a statement, the procedure will, so far as possible, be the same as if the accused had called witnesses to the facts of the case other than himself.<sup>2</sup>

1. An accused person defended by counsel or by an officer acting as counsel has the option of either giving evidence himself or making a statement. He cannot be compelled either to give evidence or to make a statement, and he cannot be allowed to do both.

The statement of the accused differs from his evidence when he is defended by counsel in that the statement—

- (1) is not on oath;
- (2) may be in writing;
- (3) is delivered as a consecutive statement and not as a series of answers to questions;
- (4) is not subject to the rules of evidence;
- (5) does not subject the accused to cross-examination;
- (6) will be delivered by the accused from the place where he is ordered to take up his position, and not from the place from which witnesses give evidence.

As to the weight to be allowed to a statement of the accused, see note 1 to r. 43.

2. The result of this is that, if the accused makes a statement, the prosecutor will be entitled to call witnesses in reply and to reply to the address of counsel or the officer acting as counsel for the accused. (See r. 41 and Form of Proceedings para. (8), p. 691.) But if the accused elects to give evidence instead of making a statement, and he is the only witness to the facts of the case called by the defence, the procedure will be in accordance with r. 40, not with r. 41.

### *Proceedings.*

**95. (A)** At a court-martial the judge-advocate, or, if there is none, the president, shall record or cause to be recorded all transactions of that court<sup>1</sup>, and shall be responsible for the accuracy of the record (in these rules referred to as the proceedings); and if the judge-advocate is called as a witness by the accused, the president will be responsible for the accuracy of the record in the proceedings of the evidence of the judge-advocate. Record in proceedings of court martial.

(M.L.)

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(B) The evidence shall be taken down in a narrative form<sup>3</sup> in as nearly as possible the words used; but in any case where the prosecutor, the accused person, the judge-advocate, or the court considers it material, the question and answer shall be taken down *verbatim*<sup>3</sup>.

(C) Any question which has been objected to, and the tender of any evidence which has been objected to, shall, if the prosecutor or accused so requests, or the court think fit, be entered with the grounds of the objection, and the decision of the court thereon.

(D) Where any address by or on behalf of the prosecutor or person under accusation, or the summing up of the judge-advocate, is not in writing, it shall not be necessary to record the address or summing up in the proceedings further or otherwise than the court think proper, or in the case of the summing up than the judge-advocate requires, except that—

- (1) The court shall in every case make such record of the defence made by the accused as will enable the confirming officer to judge of the reply made by or on behalf of the accused to each charge against him; and
- (2) The court should also record any particular matters in the address by or on behalf of the prosecutor or accused person, which the prosecutor or accused person, as the case may be, requires.

(E) The court shall not enter in the proceedings any comment, or anything not before the court, or any report of any fact not forming part of the trial; but if any such comment or report seems to the court necessary, the court may forward it to the proper military authority in a separate document, signed by the president<sup>4</sup>.

1. The record must be taken in a clear and legible hand, without erasures. Interlineations or corrections must be avoided as much as possible; when made they should be verified by the president's initials. The pages should be numbered and the sheets fastened together, and sufficient space must be left below the signature of the president for the remarks of the confirming authority. The station must be added, together with the date. See also Memoranda for Guidance of Courts-Martial, p. 706.

2. i.e., the material effect of a question and answer is to be written down as the evidence given by the witness, without distinguishing the question and answer. Thus, suppose the question to be "What did the accused do then?" and the answer to be "He left the room," the evidence taken down would be "Accused then left the room." Often, especially in cross-examination the question is irrelevant, or is made irrelevant by the answer; in such cases it will be unnecessary to take anything down.

If the evidence is not given in English, the interpretation into English as given to the court will be taken down, except that where a question or answer is required to be taken down in the proceedings *verbatim*, and is not in English, it must be taken down, as nearly as may be, in the English character, and the interpretation of it into English added.

3. The obligation to take down important passages *verbatim* applies to the cross-examination of a witness as well as to his examination-in-chief.

4. The court can make in a separate document any remark they think proper on the conduct of any person who appeared before them, or on the manner in which a particular witness has given his evidence, or on the manner in which the prosecution has been conducted; also, if they think the evidence shows that the accused has committed some offence not charged, e.g., if he is charged with desertion in August, and the evidence shows that he deserted in June, they must acquit him, but may report separately the offence of June.

The court can scarcely be too guarded in expressing censure on individuals not before them for trial; indeed, cases justifying such expression will be rare and exceptional.

It will usually be desirable to make a note at the time of any matter upon which the court intend to make any such comment or report, although it will not be correct to enter such matter in the proceedings.



96. The proceedings shall be deemed to be in the custody of the judge-advocate (if any), or if there is none, of the president, but may, with proper precautions for their safety, be inspected by the members of the court, the prosecutor, and accused respectively, at all reasonable times before the court is closed to consider the finding.

97. (A) Where the court is a general court-martial the proceedings shall be at once sent by the person having the custody thereof, to such person as may be from time to time directed by His Majesty, and subject to the provisions of any such direction of His Majesty, as may be directed by the order convening the court<sup>2</sup>.

Custody and inspection of proceedings after finding.

(B) Where the court is a district court-martial, the proceedings shall be at once sent by the person having the custody thereof, to such person as may be directed by the order convening the court, or in default of any such direction to the confirming officer.

(C) Where the court is a regimental court-martial, the proceedings shall be at once sent by the president to the confirming officer.

1. i.e. (see r. 96), if it is a general court-martial, or a district court-martial with a judge-advocate, the judge-advocate, and in any other case, the president of the court.

2. The proceedings of general courts-martial will be sent, if held in the United Kingdom, to the Judge-Advocate-General in London; if held elsewhere than in the United Kingdom to the General or other officer having power to confirm the findings and sentences of general courts-martial. K.R., 592.

Where the court-martial is on a marine, the proceedings will be sent to the Admiralty and preserved there.

The provisions of this rule should, so far as possible, be followed in the case of field general courts-martial as well as general courts-martial.

If from any cause a member of the court-martial has become confirming officer, he cannot (except in the case of a field general court-martial) confirm the finding and sentence of the court, but must transmit the proceedings for confirmation to a superior officer who is competent to confirm the findings and sentences of the like description of court-martial (A.A. 54 (4)). This officer would ordinarily be as follows:—In the United Kingdom, if it is a regimental court-martial, the brigadier-general; if it is a district court-martial, the general officer commanding-in-chief the command. In India, if it is a general court-martial, the Commander-in-Chief; if it is a district court-martial, the next superior officer having authority to confirm the findings and sentences of general courts-martial, or, if there is none superior, the Commander-in-Chief; and if it is a regimental court-martial, the next superior officer having authority to convene a general or a district court-martial. Elsewhere than in India or the United Kingdom, the next superior officer who is competent to confirm; or if in a colony where there is no such officer, then the governor of the colony.

Any confirming officer has power to withhold his confirmation either wholly or partly, and refer the finding and sentence, so far as he withholds his confirmation, to a superior authority competent to confirm the finding and sentences of the like description of courts-martial (A.A. 54 (5)). The reference should be made to one of the officers mentioned above in this note.

The original proceedings, and not a copy, must be signed, and sent to the confirming officer. If the proceedings are recorded and signed in duplicate, one must be treated as a certified copy of the other, and not as the original.

The proceedings should be dated and signed, in the case of an acquittal, immediately after the finding (see r. 45); and, in the case of a conviction, after the sentence (see r. 50).

98. (A) The proceedings of a court-martial (other than a regimental court-martial) shall, after promulgation, be forwarded, as circumstances require, to the office of the Judge-Advocate-General in London or India, or to the Admiralty, and there preserved for not less, in the case of a general court-martial, than seven years, and in the case of any other court-martial, than three years.

Preservation of proceedings.

(M.L.)

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(b) The proceedings of a regimental court-martial, when promulgated, shall be preserved for not less than three years, with the regimental records of the corps to which the accused belonged in manner from time to time directed by His Majesty's Regulations.

See note to the next rule, and K.R., 595, 1928.

Rate of payment for copies of proceedings.

99. The rate at which copies of the proceedings of a court-martial shall be supplied shall be the actual cost of the copy required, not exceeding twopence for every folio of seventy-two words; and the officer or person having the custody of those proceedings must, on demand made within the time limited for the preservation of the proceedings, supply a copy accordingly to any person tried by the court-martial<sup>1</sup>.

1. This "prescribes" the rate of payment for the purposes of A.A. 124; see note on that section.

*Time limited.*—See r. 98.

Loss of proceedings.

100. (A) If the original proceedings<sup>1</sup> of a court-martial, or any part thereof, are lost, a copy thereof, if any, certified by the president of or the judge-advocate at the court-martial, may be accepted in lieu of the original.

(B) If there is no such copy, and sufficient evidence<sup>2</sup> of the charge, finding, sentence, and transactions of the court can be procured, that evidence may, with the assent of the accused, be accepted in lieu of the original proceedings, or part thereof lost.

(c) In any case above in this rule mentioned, the finding and sentence, if requiring confirmation, may be confirmed, and shall be as valid as if the original proceedings, or part thereof, had not been lost.

(d) If, in a case where confirmation of a finding or finding and sentence is required, the proceedings, or part thereof, were lost before confirmation, and there is no such copy or evidence, or the accused refuses such assent, as above mentioned, the accused may be tried again, and on the issue of an order convening the court for the trial, the finding and sentence of the previous court, of which the proceedings were so lost, shall be null.

1. See note to r. 97; and as to the impropriety of annexing documents to the proceedings, K.R., 581.

2. This may be obtained by the president, or some member of the court, writing out from memory the substance of the charge, finding, and sentence, and a summary of the transactions of the court, which should be authenticated by the signature of the members. A copy of the charge, however, should always be procured, if practicable.

### *Judge-Advocate.*

Appointment of judge-advocate and disqualification.

101. (A) Where the convening officer is authorised<sup>1</sup> to appoint a judge-advocate, he shall, in the case of a general, and may, in the case of a district, court-martial, by order appoint a fit person to act as judge-advocate at the court-martial.

(B) An officer who is disqualified<sup>2</sup> for sitting on a court-martial shall be disqualified for acting as judge-advocate at the court-martial.

(c) A court-martial shall not be invalid by reason of any invalidity in the appointment of the judge-advocate officiating thereat, in whatever manner appointed, if a fit person<sup>3</sup> has been appointed; but this rule shall not relieve from responsibility the person who made the invalid appointment<sup>4</sup>.

1. i.e., by the warrant authorising him to convene a court-martial.

In the case of a general court-martial in the United Kingdom, the warrant to the convening officer does not give him power to appoint a judge-advocate. Application must be made to the Judge Advocate-General for the necessary authority.

2. See r.r. 19 (B) and 22 (B) and notes thereon. A civilian who is under the same disqualification as is mentioned in r. 19 (B) ought not to serve as judge-advocate, though not in terms disqualified by this rule; indeed, by A.A. 50 (3), a prosecutor or any witness for the prosecution, whether an officer or not, is disqualified for acting as judge-advocate.

3. A judge-advocate should of course be free from all suspicion of bias or prejudice; and should possess some acquaintance with military law and the rules of evidence.

4. The object of this paragraph is merely to prevent a miscarriage of justice in consequence of any invalidity in the appointment of a judge-advocate; not to enable an officer, who is not authorised to appoint a judge-advocate, to appoint one. An officer who, without due authority, attempts to appoint a judge-advocate, will justly incur censure.

102. If the judge-advocate dies, or from illness, or from any cause whatever is unable to attend, the court shall adjourn, and the president shall report the circumstance to the convening authority; and a person not disqualified to be judge-advocate may be appointed by the proper authority, and he shall be sworn<sup>1</sup>, and act as judge-advocate for the residue of the trial, or until the judge-advocate returns.

Substitute on death, illness, or absence of judge-advocate.

1. See r.r. 27, 28; Form of Proceedings, para. (5), p. 685.

103. The powers and duties of a judge-advocate are as follows:—

Powers and duties of judge-advocate.

- (A) The prosecutor and the accused respectively, are at all times, after the judge-advocate is named to act on the court, entitled to his opinion on any question of law relative to the charge or trial, whether he is in or out of court, subject, when he is in court, to the permission of the court;
- (B) At a court-martial he represents the Judge-Advocate-General;
- (C) He is responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not, he will inform the convening officer and the court of any informality or defect in the charge, or in the constitution of the court, and will give his advice on any matter before the court.
- (D) Any information or advice given to the court on any matter before the court will, if he or the court desire it, be entered in the proceedings.
- (E) At the conclusion of the case he will, unless both he and the court consider it unnecessary, sum up the evidence and give his opinion upon the legal bearing of the case before the court proceed to deliberate upon their finding.
- (F) Upon any point of law or procedure which arises upon the trial which he attends, the court should be guided by his opinion, and not overrule it, except for very weighty reasons. The court are responsible for the legality of their decisions, but they must consider the grave consequences which may result from their disregard of the advice of the judge-advocate on any legal point. The court, in following the opinion of the judge-advocate on a legal point, may record that they have decided in consequence of that opinion<sup>1</sup>.
- (G) The judge-advocate has, equally with the president<sup>2</sup>, the duty of taking care that the accused does not suffer any

disadvantage in consequence of his position as such, or of his ignorance or incapacity to examine or cross-examine witnesses or to make his own evidence clear or intelligible, or otherwise, and may, for that purpose, with the permission of the court<sup>3</sup>, call witnesses and put questions to witnesses, which appear to him necessary or desirable to elicit the truth.

(H) In fulfilling his duties the judge-advocate will be careful to maintain an entirely impartial position.

1. With reference to this paragraph, it is to be observed that the members of the court may become responsible to the ordinary civil courts of law in the event of the accused being unjustly convicted: see Ch. VIII. This liability may turn on the question whether they exercised a *bond fide* judgment; and though they are not bound by the opinion of the judge-advocate, yet disregard of his advice, if that advice is right, might be held to show that they did not exercise a *bond fide* judgment. On the other hand, the adoption of the advice of the judge-advocate, even if wrong, may, in a doubtful case, practically exonerate the members from liability.

2. As to the duty of the president towards the accused see r. 59 (B) and note.

3. This should never be refused unless the court consider that the judge-advocate is acting improperly, or in such a manner as to obstruct the proceedings, and they should always record their reasons for refusing the permission.

### *Exception from Rules.*

Suspension of rules on the ground of military exigencies or the necessities of discipline.

104. Where it appears to the officer convening a court-martial, or to the senior officer on the spot, that military exigencies<sup>1</sup>, or the necessities of discipline, render it impossible or inexpedient to observe any of the rules 4 (c), (D), and (E), 5, 8, 13, and 14, he may, by order under his hand, make a declaration to that effect specifying the nature of such exigencies or necessities, and thereupon the trial or other proceeding shall be as valid as if the rule mentioned in the declaration had not been contained herein; and the declaration may be made with respect to any or all of the rules above in this rule mentioned in the case of the same court-martial<sup>2</sup>.

Provided that the accused shall have full opportunity of making his defence<sup>3</sup>, and shall be afforded every facility for preparing it which is practicable, having due regard to the said exigencies or necessities.

1. The nature, and not merely the existence, of military exigencies, or the necessities of discipline, must be stated in the order.

2. The power conferred by this rule should hardly ever be exercised, except when on active service, and then only if absolutely necessary. It may, however, occasionally be necessary to resort to it on the eve of embarkation, or on the line of march, or possibly in an extreme case, where the necessities of discipline require a very speedy trial and punishment.

In exercising the power under the rule, the officer must consider whether it is necessary to dispense with all the rules mentioned. For example, the observance of r. 4 (C), (D), and (E) may be practicable, although that of r. 14 is not so. If r.r. 4 (C), (D), and (E), and 8 are suspended by the order, some means must be taken to inform the accused of the charge, and of the names of the witnesses, and of the nature of their evidence, and the court must take care that the accused is not prejudiced by reason of the suspension, as, for instance, by not having received any summary of evidence.

The power of dispensing with r. 13 is only intended to be exercised, in case it is necessary to try a person before he can communicate with any witness or friend at a distance. That rule should never be dispensed with except in extreme cases, and even then the accused must be allowed free communication with any witness or friend on the spot.

R. 14 (O) and (D) must always be complied with, and r. 14 (A) and (B), if not complied with within the time there mentioned, should be complied with as long as possible before the assembly of the court.

3. The accused will not have this opportunity unless he receives in reasonable time the information mentioned above; and if he requests a reasonable adjournment in order to consider the witnesses' evidence, or to acquaint himself with the charge, or requests the postponement of the cross-examination of a witness, the court should grant the request, and may adjourn for the purpose. A refusal might be held to be non-compliance with this proviso, and thus to invalidate the trial. For the same reason the court, even in the absence of any such request, must take care that the accused is not prejudiced by being taken by surprise, either by the charge or the evidence of the witnesses.

### *Field General Court-Martial.*

The foregoing rules shall not, save as hereinafter mentioned, apply to field general courts-martial, which shall be subject to the following rules:—

105. (A) A field general court-martial<sup>1</sup> may be convened—

Convening  
of field  
general  
court-  
martial.

- (i) By any officer in command of a detachment or portion of troops in any country beyond the seas when not on active service, where complaint is made to him that an offence has been committed by any person subject to military law under his command against the property or person of any inhabitant of or resident in that country: or
- (ii) By the commanding officer of any corps or portion of a corps on active service, or by any officer in immediate command of a body of forces on active service, where it appears to him, on complaint or otherwise, that a person subject to military law has committed an offence.

(B) An officer in command of a detachment or portion of troops not on active service should not convene a field general court-martial in His Majesty's dominions unless he is authorised so to do by the general officer commanding the forces to which the officer belongs.

(C) An officer, before convening a field general court-martial for the trial of a person, shall be satisfied that it is not practicable<sup>2</sup> to try the person by an ordinary court-martial, and—where the officer is below the rank of field officer and is not a commanding officer—be further satisfied that it is not practicable<sup>3</sup> to delay the trial for reference to a superior officer.

1. See generally as to field general courts-martial A.A. 49 and Ch. V, paras. 25 and 26.

The court should not, as a rule, be convened for the trial of an offence not committed on active service, in any place where ordinary civil justice is administered.

Subject to the restrictions imposed by A.A. 49 and by this rule, a field general court-martial can try any offence, and can try an officer.

2. See r. 122 (A).

106. (A) Not less than three officers must be appointed<sup>1</sup>.

Composi-  
tion of field  
general  
court-  
martial.

(B) If the convening officer is of opinion that three other officers are not available<sup>2</sup> to form the court, he may appoint himself president of the court; but if he is of opinion that three other officers are available, or that although three other officers are not available he is himself by reason of his position as confirming officer or otherwise not available, he must appoint as president some other officer:—

Provided that the convening officer—

- (i) Must not appoint as president any officer below the rank of field officer, unless he is himself below that rank, or unless in his opinion a field officer is not available; and
- (ii) Where under the foregoing provision he has power to appoint as president an officer below the rank of field officer, must not appoint an officer below the rank of captain, unless in his opinion a captain is not available.

(c) The officers should have held commissions for not less than one year, and if in the opinion of the convening officer any officers are available who have held commissions for not less than three years, he should appoint those officers in preference to officers of less service.

(d) The provost-marshal, an assistant provost-marshal, and an officer who is prosecutor or a witness for the prosecution, must not be appointed a member of the court, but save as aforesaid any available officers may be appointed to sit.

1. (A) This gives the ordinary rule for the constitution of a field general court-martial. In case of military exigencies, two officers only may be appointed, if three are not available. A.A. 49 (1) (b) and r. 107 (A). Speaking generally, the rules which govern the procedure of ordinary courts-martial should be observed as far as practicable.

2. *Available.* See r. 122 (A).

As to field  
general  
court-  
martial  
where  
military  
exigencies  
occur.

107. (A) Where the convening officer is satisfied that military exigencies or other circumstances prevent compliance with Rule 106, and that it is not practicable<sup>1</sup> to delay the trial for the purpose of such compliance, then if, in his opinion, three officers are not available<sup>1</sup>, two will be appointed.

(B) The court may be convened, and the proceedings of the court recorded in accordance with the form in the Second Appendix to these rules<sup>2</sup>; but if it appears to the convening officer that military exigencies or other circumstances prevent the use of that form, the court-martial may be convened and the proceedings carried on without any writing, except that such written record as seems practicable<sup>1</sup> must be kept by the provost-marshal or assistant provost-marshal, if present, or if not, by the president and the officer charged with the promulgation, stating as near as may be the particulars set forth in the form, and stating at least the name (or, if the name is not known, the description) of the offender, the offence charged, the finding, sentence, and confirmation, and any recommendation to mercy.

(c) The convening officer will report to superior authority for the information of the officer who, if a field general court-martial had not been convened, would have had power to convene a general court-martial to try the accused, the military exigencies or other circumstances which prevented compliance with Rule 106, or the use of the form in the Second Appendix<sup>3</sup>.

1. *Practicable—available.* See r. 122 (A).

2. For form, see pp. 700-702.

3. Before resorting to the exceptional courses allowed by this rule, the convening officer must satisfy himself of the military exigencies or other circumstances which justify it.

The accused must always have full opportunity of making his defence; see r. 116.

Charge.

108. The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Army Act.



109. The court may be sworn at the same time to try any number of accused persons then present before it, but, except so far as accused persons are tried together for an offence committed collectively, the trial of each accused person will be separate. Trial of several accused persons.

110. (A) The names of the president and members of the court will be read over in the hearing of the accused persons, and they will be asked if any of them objects to be tried by any of those officers. Challenge.

(B) If any accused person objects to an officer, and any member of the court thinks the objection reasonable, steps will be taken to try the accused before a court composed of officers against whom he has no reasonable objection.

111. (A) The president will administer to the other members of the court, and a member of the court, when sworn, will administer to the president, the following oath<sup>1</sup>:— Swearing court.

“You , do swear that you will well and truly try the accused person [or persons] before the court according to the evidence, and that you will duly administer justice according to the Army Act now in force, without partiality, favour, or affection, and you do further swear that you will not divulge the sentence of the court until it is duly confirmed, and you do further swear that you will not, on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you GOD.”

(B) The following oath shall be administered by a member of the court to every interpreter:—

“You do swear that you will to the best of your ability truly interpret and translate, as you shall be required to do, touching the matter before this court-martial. So help you GOD.”

1. See notes to A.A. 52 (1).

112. When the court are sworn, the president will state to the accused then to be tried the offence with which he is charged, with, if necessary, an explanation giving him full information of the act or omission with which he is charged, and will ask the accused whether he is guilty or not of the offence. Arraignment.

113. If a special plea to the general jurisdiction is offered by the accused, and is considered by the court to be proved, the court shall report the same to the convening officer. Plea to jurisdiction.

See r. 34, and note.

114. (A) The witnesses for the prosecution will be called, and the accused will be allowed to cross-examine them, and to call any available witnesses for his defence<sup>1</sup>. Witnesses.

(B) The following oath shall be administered by a member of the court to every witness:—

“The evidence which you shall give before this court shall be the truth, the whole truth, and nothing but the truth, So help you GOD.”

(C) The President of the court shall take down, or cause to be taken down, a short summary of the evidence of all the witnesses at the trial, and the summary so taken down shall be attached to the proceedings:

Provided that, if it appears to the convening officer that military exigencies or other circumstances prevent compliance with this provision, the trial may be carried on without any summary being

taken down, but in every such case the convening officer shall report to superior authority in the same manner as he is required to do under the provisions of Rule 107 (c).

1. The accused will be able on his own application to give evidence himself or to call his wife as a witness (see r. 80).

Mode of  
swearing  
witness, and  
solemn de-  
claration.

115. (A) A member of the court or a witness may take an oath with such ceremonies and in such manner as makes the oath binding on his conscience, and the words "you" and "So help you GOD" may be varied or omitted for the purpose.

Solemn de-  
claration by  
witness.

(B) If a member of the court or a witness or an interpreter objects to take an oath, or is objected to as incompetent to take an oath, and the court is satisfied of the sincerity of the objection, or, where the competence of the person to take the oath is objected to, of the oath having no binding effect upon the conscience of the person, the court shall permit the person, in lieu of an oath, to make a solemn declaration, which will be in the same form as the oath, with the substitution of "I" for "you," and with the omission of "You do swear that" and "So help you GOD," and with the substitution or addition, where necessary, of "I do solemnly declare that."

See r. 80, and note, and A.A. 52 (4).

Defence.

116. The accused will be asked what he has to say in his defence, and shall be allowed to make his defence.

Acquittal.

117. (A) In the case of an equality of opinions on the finding the accused will be acquitted.

(B) The finding of acquittal requires no confirmation, and, if it relates to all the offences charged against an accused person, will be declared at the time of the finding, and the accused will thereupon be discharged from custody.

Sentence.

118. (A) The court, if consisting of three or more officers, may award any sentence which a general court-martial can award; but if the court pass sentence of death, the whole court must concur.

(B) The court, if consisting of two officers, may award any sentence authorised for the offence, not exceeding field punishment<sup>1</sup>, or two years' imprisonment with hard labour.

(C) Any recommendation to mercy will be attached to the proceedings, and communicated to the accused, together with the finding and sentence.

1. See Field Punishment Rules, pp. 721, 722.

General  
provisions  
as to votes  
and powers  
of court.

119. (A) Except as provided by Rules 110 (B), 117, and 118, every question will be determined by the majority of opinions, and in case of equality, the president shall have a second or casting vote.

(B) If, after the commencement of the trial, the court consider that any accused person named in the schedule to the order convening the court should be tried by an ordinary court-martial, the court may strike the name of that person out of the schedule.

(C) The proceedings shall be held in open court, in the presence of the accused, except on any deliberation among the members, when the court may be closed.

(D) The court may adjourn from time to time, and may, if necessary, view any place.

Confirma-  
tion.

120. (A) Except in the case of acquittal, the finding and sentence of the court shall be valid only in so far as they are confirmed by proper military authority<sup>1</sup>.

(b) The provost-marshal or an assistant provost-marshal cannot confirm the finding or sentence of the court<sup>3</sup>.

(c) A prosecutor of an accused person or a member of the court trying an accused person cannot confirm the finding or sentence of the court as regards that person, except that if a member of the court trying an accused person would otherwise under these rules have power to confirm the sentence, and is of opinion that it is not practicable<sup>3</sup> to delay the case for the purpose of referring it to any other officer, he may confirm the finding and sentence.

(d) In any case where a sentence of death, penal servitude, imprisonment, or detention, is passed, the confirming authority shall after confirmation forthwith transmit the proceedings to the officer in chief command of the forces in the field comprising the force with which the accused is present, and a sentence of death or penal servitude shall not be carried into effect pending the decision of that officer on the case :—

Provided that—

- (i) The confirming officer shall not be required to refer any case to the officer in chief command in the field if in confirming the sentence he commutes it so as to make it a punishment less than detention ; and
  - (ii) Where the confirming officer is of opinion that, by reason of the nature of the country the great distance, or the operations of the enemy, it is not practicable<sup>3</sup> to delay the case for the purpose of referring it to the officer in chief command in the field, a sentence of death or penal servitude may be carried into effect if confirmed by the general or field officer commanding the force with which the person under sentence is present at the date of the sentence.
- (e) Subject to the preceding provisions of this Rule, the finding and sentence of a field general court-martial as regards any person may be confirmed—
- (i) Where the court was convened by an officer in command of a detachment or portion of any troops not on active service, by an officer authorised to confirm the findings and sentences of general courts-martial for the trial of offences in the force of which the detachment or portion of troops form part ; and
  - (ii) Where the court was convened by an officer in command of any troops on active service, by the senior officer, not being an officer below the rank of field officer, present at the place where the trial takes place, or if there is no officer not below that rank present at that place, by the senior officer not below the rank of field officer present at any other place.
- (f) Any officer may, if he thinks it desirable, reserve any finding or sentence for confirmation by superior authority<sup>4</sup>.
- (g) A confirming authority shall not send back a finding and sentence for revision more than once, nor recommend the increase of a sentence, and on any revision the court shall not take further evidence nor increase the sentence<sup>5</sup>.

1. This is the same provision as is enacted in A.A. 54 (6) for ordinary courts-martial (see note to that section, and Ch. V, para. 5).

2. The general effect of (B)–(E) is this. The ordinary rule for the confirmation of the finding and sentence of a field general court-martial will be (as laid down in (B)) that it is confirmed where troops are not on active service,

by some officer authorised to confirm the findings and sentences of general courts-martial; and where troops are on active service, by the senior officer (if of field rank) on the spot, and if the senior officer is not of that rank, by the nearest available senior officer of that rank.

If the sentence is one of the severity of detention or upwards, it must be referred to the general in chief command in the field; and a sentence of death or penal servitude must not be carried out pending his decision. But if communication with that officer is impracticable, or so difficult as to cause too great delay, a sentence of death or penal servitude may be carried into effect if confirmed by the general or field officer commanding the force with which the accused is present.

(B) and (C) give effect to the ordinary rule that a prosecutor or a member of the court is not to confirm, and the rule is extended to the provost-marshal and his assistant, as if he were the prosecutor.

3. See r. 122 (A).

4. Enables any officer to refer a confirmation to superior authority, or to confirm the finding and refer the sentence.

5. Applies the law enacted for ordinary courts-martial by Army Act, s. 54 (2).

**Application of rules.**

121. The foregoing rules—54 (Mitigation of sentence on partial confirmation), 56 (Confirmation notwithstanding informality in or excess of punishment), 97 (Transmission of proceedings after finding), 98 (Preservation of proceedings), 99 (Rate of payment for copies of proceedings), and 100 (Loss of proceedings)—shall, so far as practicable, apply as if a field general court-martial were a district court-martial.

**Definitions.**

122. (A) In the rules with respect to field general courts-martial, unless the context otherwise requires, the expressions “practicable” and “available” mean respectively practicable and available, having due regard to the public service.

(B) The expression “commanding officer of a corps or portion of a corps” means the officer whose duty it is under the provisions of His Majesty’s Regulations, or, in the absence of any such provisions, under the custom of the service, to deal with a charge against any of the persons belonging to the corps or portion of a corps who are present under his command, of having committed an offence, that is, to dispose of the charge on his own authority or to refer it to superior authority.

(B) See note to r. 129.

**Evidence of opinion of convening and confirming officer.**

123. Any statement in an order convening a field general court-martial as to the opinion of the convening officer, and any statement in the minute confirming the finding or sentence of a field general court-martial as to the opinion of the confirming officer, shall be conclusive evidence of that opinion, but this rule shall not prejudice the proof at any time of any such opinion when not so stated.

## PART II.—MISCELLANEOUS.

### *Regulations for Courts of Inquiry, other than Courts of Inquiry held under Section 72 of the Army Act.*

124. (A) A court of inquiry is an assembly of officers directed to collect evidence, and, if so required, to report with regard to any matter which may be referred to them<sup>1</sup>. Courts of Inquiry.

(B) A court of inquiry may be assembled by the Army Council or by the officer in command of any body of troops, whether belonging to one or more corps.

(C) The court may be composed of any number of officers of any rank, and of any branch or department of the service, according to the nature of the investigation.

(D) The court will be guided by the written instructions of the authority who assembled the court. The instructions will be full and specific, and will state the general character of the information required. They will also state whether a report is required or not.

(E) Previous notice should be given of the time and place of the meeting of a court of inquiry, and of all adjournments of the court, to all persons concerned in the inquiry.

(F) Whenever any inquiry affects the character or military reputation of an officer or soldier, full opportunity must be afforded to the officer or soldier of being present throughout the inquiry, and of making any statement and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation, and producing any witnesses in defence of his character or military reputation<sup>2</sup>.

(G) It is the duty of a court of inquiry to put such questions to a witness as they think desirable for testing the truth or accuracy of any evidence he has given, and otherwise for eliciting the truth.

(H) When a court of inquiry is held on recovered prisoners of war, and in any other case in which the authority who assembled the court has so directed, the evidence will be taken on oath, in which case the court will administer the same oath or solemn declaration to witnesses as if the court were a court-martial.

The authority who assembled the court will, when the court is held on a returned prisoner of war, direct the court to record their opinion whether the officer or soldier concerned was taken prisoner by reason of the chances of war, or through neglect or misconduct on his part, and the authority who assembled the court will record his own opinion. In other cases the court will give no opinion on the conduct of any officer or soldier unless so directed by the authority who assembled the court.

(I) The members of the court will not themselves be sworn, but when the court is a court of inquiry on recovered prisoners of war the members will make the following declaration :—

*I, A.B. do declare upon my honour that I will duly and impartially inquire into and give my opinion as to the circumstances in which became a prisoner of war, according to the true spirit and meaning of His Majesty's Orders and Regulations on this head; and I do further declare, upon my honour, that I will not on any*

*account, or at any time, disclose or discover my own vote or opinion, or that of any particular member of the court, unless required to do so by competent authority.*

(J) The court may be re-assembled as often as the authority who assembled the court may direct, for the purpose of examining additional witnesses, or further examining any witness, or recording further information.

(K) The whole of the proceedings of a court of inquiry will be forwarded by the president to the authority who assembled the court.

(L) The proceedings of a court of inquiry, or any confession, statement, or answer to a question made or given at a court of inquiry, shall not be admissible in evidence against an officer or soldier, nor shall any evidence respecting the proceedings of the court be given against any officer or soldier, except upon the trial of any officer or soldier under Section 29 of the Army Act, for wilfully giving false evidence before that court.

(M) An officer or soldier who is tried by court-martial in respect of any matter or thing which has been reported on by a court of inquiry, and, unless the Army Council see reason to order otherwise, an officer or soldier whose character or military reputation is, in the opinion of the Army Council, affected by anything in the evidence before, or in the report of, a court of inquiry, shall be entitled to a copy of the proceedings of the court, including any report made by the court, on payment of the actual cost of the copy required, not exceeding twopence for every folio of 72 words.

1. See generally as to courts of inquiry, K.R., 666-678. As to privilege of report of court, see Ch. VIII, para. 78; and as to privilege of witnesses, *ib.*, para. 82.

2. A court of inquiry has no power to compel the attendance of civilian witnesses.

*Regulations for Courts of Inquiry under Section 72 of the Army Act, for the purpose of determining the illegal Absence of Soldiers.*

Courts of inquiry as to illegal absence under s. 72.

125. (A) A court of inquiry under Section 72 of the Army Act<sup>1</sup>, will, when assembled, require the attendance of such witnesses as they think sufficient to prove the absence and other facts specified as matters of inquiry in that section<sup>2</sup>.

(B) They will take down the evidence given them in writing, and at the end of the proceedings will make a declaration<sup>3</sup> of the conclusions at which they have arrived in respect of the facts they are assembled to inquire into.

(C) The commanding officer of the absent soldier will enter in the regimental books a record of the declaration of the court, and the original proceedings will be destroyed.

(D) The court of inquiry will examine all witnesses who may be desirous of coming forward on behalf of the absentee, and will put such questions to them as may be desirable for testing the truth or accuracy of any evidence they have given, and otherwise for eliciting the truth, and the court in making their declaration, will give due weight to the evidence of all such witnesses.

(E) A court of inquiry will administer the same oath<sup>4</sup> or solemn declaration to the witnesses as if the court were a court-martial, but the members of such court will not themselves be sworn.

1. See notes to A.A. 72.

2. See note 2 to r. 124.



The court should not be assembled until the soldier has been absent for a period of 21 clear days—excluding the day on which the absence commenced and that on which the court assembles.

8. The court, in making their declaration on A.F., A.2, will follow the wording shown below. The record of the declaration in Army book, 161 will be an exact reproduction of the declaration on A.F., A.2. (See K.R. 1912.)

#### Declaration.

The Court declare that No. . . . [rank, name, corps] illegally absented himself without leave [or other sufficient cause] at [station or place] . . . on the . . . day of . . . ; that he is still so absent, and that on the . . . [date on which the inventory of kit was taken] he was deficient, and that he is still deficient of the following articles :

.....  
 .....  
 .....

Names of	{	.....	President.
President		.....	Members.
and		.....	
Members.	}	.....	

In framing a charge of Losing by Neglect the date of inventory should be assigned.

Before a Court of Inquiry are entitled to find deficiencies they will require evidence :—

- that the absentee has been at some time previously in possession of a complete kit, or, at any rate, of the articles alleged to be deficient ;
- that an inventory of his kit has been taken, and at the taking of the inventory certain specified articles were deficient ;
- that none of the articles have since been recovered. (Any articles recovered will, of course, be omitted.)

When A.F., B. 115 is produced in evidence before a court-martial it is not necessary that A.B. 161 should be laid before the court for comparison with that document.

4. See r. 82.

#### Explanation of "Prescribed" and "Commanding Officer."

126. (A) The committing authority under ss. 59, 60, 61, 64, and 65 of the Army Act, shall include :—

Prescribed officer for committing, removing, and commuting authority, and for the purpose of ss. 43 and 73.

- (1) The general officer commanding in chief the command where the military convict or soldier under sentence may for the time being be ; the officer in charge of administration of that command ; the general or other officer commanding the district, division, or independent brigade, in or with which the military convict or soldier under sentence may for the time being be ; and the commander of the coast defences, or station, where the military convict or soldier under sentence may for the time being be ; and
- (2) When the convict or soldier under sentence is in India, the general or other officer in command of a division and his assistant adjutant generals ; the general or other officer in command of a brigade which does not form part of any division and his deputy assistant adjutant-general or brigade major.

But any officer in this sub-section mentioned shall not, by virtue thereof, be a discharging authority.

(B) The removing authority under section 64 of the said Act, as respects a soldier under sentence in the United Kingdom, and the

competent military authority under section 67 of the said Act, as respects a soldier under sentence elsewhere than in India, shall include any of the officers named in paragraph (1) of sub-section (A) of this rule; and as regards a soldier under sentence for the time being in India, the competent military authority under section 67 of the said Act shall include any of the officers named in paragraph (2) of sub-section (A) of this rule.

(c) Any of the officers named in paragraph (1) of sub-section (A) of this rule, shall be authorities having power under section 57 of the said Act, to mitigate, remit, or commute punishment awarded by sentence of a court-martial.

(d) The discharging authority under sections 64 and 65 of the Army Act shall include :—

In the United Kingdom, the officer commanding the command in which the soldier under sentence is, or an officer not under the rank of brigadier-general in or under whose command the soldier under sentence may for the time being be, provided he does not hold a command inferior to that of the officer who confirmed the sentence.

In India the general officer commanding the division and his assistant adjutant-general or an officer not under the rank of brigadier-general in or under whose command the soldier under sentence may for the time being be, provided he does not hold a command inferior to that of the officer who confirmed the sentence.

In a colony, an officer not under the rank of brigadier-general in or under whose command the soldier under sentence may for the time being be, provided he does not hold a command inferior to that of the officer who confirmed the sentence.

(E) The general officer to whom a complaint may be made in pursuance of section 43 of the Army Act shall as respects a soldier serving elsewhere than in India, be the general officer commanding-in-chief the command, or the general officer commanding the district, or station, where the soldier may for the time being be.

(F) The competent military authority for the purpose of section 73 (3) of the Army Act shall, as respects a soldier serving in the United Kingdom, include any officer, not under the rank of brigadier-general, in or under whose command the soldier may for the time being be.

Prescribed  
procedure  
for court of  
inquest  
(India)  
under  
s. 133.

127. When a court of inquest is required to be convened by the commanding officer under section 133 of the Army Act, the court shall be convened and inquest held in manner following :—

- (a) The commanding officer of the station will order the court to assemble.
- (b) The court will consist of three officers and of a medical officer.
- (c) The court shall not take evidence on oath, and shall warn every person who is accused or suspected that he is not required to give evidence criminating himself, but that any statement or evidence he gives may be used against him in the event of any further proceedings being instituted.
- (d) The court, after hearing the evidence, shall report to the officer commanding the station, the evidence as to the cause of the death, together with the written opinion of the medical officer of the court, on his examination of the body, as to the cause of death.

- (e) the commanding officer shall, as soon as practicable, forward the report of the court to the nearest civil magistrate having authority to hold an inquest on death, who may proceed thereon as if he had himself held the inquest.

128. The competent military authority in Part II of the Army Act, shall include the following officers, viz. :—

Prescribed officer for competent military authority (s. 101).

- (i) In India,

The Commander-in-Chief of the forces in India: the general or other officer in command of a division; and the general or other officer in command of a brigade which does not form part of any division.

- (ii) In any place situate out of India, and out of the United Kingdom, the general or other officer commanding the forces in that place; the general or other officer in charge of administration, or in command of a division or independent brigade in that place.

In addition to the above-mentioned officers it also includes :—

- (iii) For the purposes of sections 80, 82, 84, and 85 of the said Act, the commanding officer of the soldier, and every officer superior in command to that commanding officer, and not hereinbefore included :
- (iv) For the purposes of any transfer by consent under section 83 (2) any authority superior in command to the commanding officer of the soldier.
- (v) For the purposes of section 99, any officer having power to convene a district court-martial for the trial of the soldier.
- (vi) Such officer as may be directed from time to time by His Majesty's Regulations to perform in any place or for any purpose specified in that behalf the duty of the competent military authority<sup>1</sup>.

1. See K.R. 597, directing other officers to act as the competent military authority for the purpose of A.A. 83 (7).

129. The expression "commanding officer," as used in the sections of the Army Act, relating to "*Courts-Martial*," to the "*Execution of Sentence*," and to the "*Power of Commanding Officer*," and in the provisions, consequential thereon, and in these Rules, means, in relation to any person, the officer whose duty it is, under the provisions of His Majesty's regulations, or, in the absence of any such provisions, under the custom of the service, to deal with a charge against that person of having committed an offence, that is, to dispose of it on his own authority<sup>1</sup>.

Definition of "commanding officer."

It also, as far as relates to the summary award of any punishments for offences, being punishments which under the provisions of His Majesty's Regulations an officer commanding a squadron company, troop, or battery, is authorised to award, and so far as relates to a summary finding in a case of absence without leave, includes the officer commanding a squadron, company, troop, or battery<sup>2</sup>.

1. Every officer, however temporary or casual his command over a person accused may be, will be within this definition if the custom of the service enables him to tell off the accused. In all of these rules "commanding officer" has the meaning given to it by this rule.

In the portions of the Army Act not above mentioned, "commanding officer" is not limited to the C.O. as defined by this rule, though the C.O. as so defined is often (see notes) the proper officer to act. See K.R., 456.

It is laid down in K.R., 457, 458, that the C.O. officer of a detachment has the same power of awarding summary punishment (as laid down in K.R. 493) as the C.O. of the corps, subject to any restrictions that may be imposed by superior authority.

2. See K.R., 484 and 501.

(M.L.)

*Prisons and Detention Barracks Abroad.*

**Committal and removal of prisoners in one colony to authorised prisons in other colonies.**

130. (A) A military prisoner who has been sentenced to imprisonment in any place out of the United Kingdom may, if he is in any place mentioned in the first column of the following table, be committed, or, if he has been committed to prison, be removed, if occasion arises, to a *military* detention barrack or prison wherever situate, or to an *authorised* prison situate in any place mentioned opposite thereto in the second column of the following table<sup>1</sup> :—

TABLE.

A soldier under sentence of imprisonment, and being in any place in any of the groups following :—	May be committed, or, if he has been committed to a prison, may be removed, to an authorised prison in—
--	---

## GROUP I.

(American and Mediterranean.)

Canada.  
Newfoundland.  
Bermuda.  
Gibraltar.  
Malta.  
Cyprus.  
Egypt.

Any place in Group I (American and Mediterranean); or  
In Group III (South African); or  
In Group VII.

## GROUP II.

(West Indian.)

West Indies, including—  
Jamaica.  
Turks and Caicos Islands.  
Bahamas.  
Barbados and Windward Islands.  
Trinidad and Tobago.  
Leeward Islands.  
Honduras.  
British Guiana.

Any place in Group II (West Indian);  
or  
In Group I (American and Mediterranean); or  
In Group III (South African); or  
In Group VII.

## GROUP III.

(South African.)

South Africa, including—  
Cape of Good Hope.  
Natal.  
Griqualand West.  
Transvaal Colony.  
Orange River Colony.  
St. Helena.

Any place in Group III (South African);  
or  
In Group I (American and Mediterranean); or  
In Group V (Australasian); or  
In Group VII.

## GROUP IV.

(West African.)

West African Colonies, including—  
Sierra Leone.  
Gambia.  
Cape Verde Islands.  
Lagos.

Any place in Group IV (West African);  
or  
In Group I (American and Mediterranean); or  
In Group III (South African); or  
In Group VII.

## TABLE—continued.

## GROUP V.

(Australasian).<sup>1</sup>

Commonwealth of Australia.  
New Zealand.  
Fiji.  
Falkland Islands.

Any place in Group V (Australasian); or  
In Group I (American and Mediter-  
ranean); or  
In Group III (South African); or  
In Group VII.

## GROUP VI.

India, as defined by the Army Act, and  
including—  
Aden and Perim.  
Mauritius.  
Ceylon.  
Hong Kong.  
Straits Settlements.  
Labuan.

Any place in Group VI; or  
In Group I (American and Mediter-  
ranean); or  
In Group III (South African); or  
In Group V (Australasian); or  
In Group VII.

## GROUP VII.

Channel Islands and Isle of Man.<sup>1</sup>

Any place in Group VII.

This rule shall not authorise any removal from a prison in the United Kingdom to a prison elsewhere.

(B) A soldier sentenced to detention in any place out of the United Kingdom may be committed, or, if he has been committed to a detention barrack or branch detention barrack, be removed, if occasion arises, to a detention barrack or branch detention barrack wherever situate; but this rule shall not authorise any removal from a detention barrack or branch detention barrack in the United Kingdom to a detention barrack or branch detention barrack elsewhere.

1. This rule is rendered necessary by A.A. 65 (1), (c), under which a prisoner can only be confined in any authorised prison in any part of His Majesty's dominions other than that in which the sentence was passed, and other than the United Kingdom, if the prison is prescribed.

The main object, as regards a colony where there is no military prison, is to enable a prisoner to be removed with, or sent to, his regiment if the regiment is serving in that colony, but not to allow prisoners in any other case to be sent to that colony. No prisoners will be committed or removed to a colony where troops are not serving, without the consent of the government of that colony.

Prisoners will not, except for special reasons which must be at once reported to a superior authority for the information of the Secretary of State for War, be removed to a military prison in any place, if they could not be removed under this rule to an authorised prison in that place.

The Isle of Man, Channel Islands, and Cyprus are declared to be colonies for the purpose of imprisonment by the A.A. 187 (2), 190 (23).

## PART III.—SUPPLEMENTAL.

131. Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office for the purpose of these rules, may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service<sup>1</sup>.

Exercise  
powers  
vested in  
holder of  
military  
office.

1. See A.A. 171.

(M.L.)

Cases un-  
provided  
for.

132. In any case not provided for by these rules such course will be adopted as appears best calculated to do justice.

Forms in  
Appendices.

133. (A) The forms in the appendices to these rules should be followed in all cases in which they are applicable, and when used shall be valid in law, but a deviation from any such form will not, by reason only of such deviation, render any charge, warrant, order, proceedings, or other document invalid.

(B) An omission of any such form will not, by reason only of the omission, render any act or thing invalid.

(C) The notes to, and instructions in, the forms will be considered as instructions which it is expedient to follow in all cases to which the notes and instructions apply.

The Army Council may append to any of the forms when issued for use such further notes as they think fit, and any such notes will be considered as instructions which it is expedient to follow in all cases to which they apply.

Definitions.

134. In these rules, unless the context otherwise requires—

(A) The expression "proper military authority," when used in relation to any power, duty, act, or matter, means such military authority as, in pursuance of His Majesty's Regulations or the custom of the service, exercises or performs that power or duty or is concerned with that act or matter.

(B) The expression "Army Act" includes any Act, whether passed before or after the date of these rules, which amends or applies the Army Act; also any Act, whether passed before or after the date of these rules, which enacts an offence which is triable by court-martial<sup>1</sup>.

(C) In any sentence of imprisonment, detention or field punishment passed after the date on which these rules come into operation the word "month" shall, unless the contrary is expressed, be construed as meaning "calendar month."

(D) Other expressions have the same meaning as if these rules formed part of the Army Act<sup>2</sup>, and accordingly words in the singular number include the plural, and words in the plural number include the singular, and the masculine gender includes the feminine gender.

1. See, for instance, the Reserve Forces Act, 1882, and the T.R.F. Act, 1907.

2. See particularly A.A. 190, and note.

Construc-  
tion of  
rules.

135. (A) Time, for the purposes of any proceeding or other matter under these rules, shall be reckoned exclusive of Sunday, Good Friday, and Christmas Day, but any time reckoned for the purposes of Rule 6, or of any punishment or of any deduction of pay shall include those days.

(B) Any report or application directed by these rules to be made to a superior authority, or proper military authority, shall be made in writing through the proper channel, unless the authority, on account of military exigencies or otherwise dispenses with the writing.

(C) These rules shall apply to a person subject to military law as an officer<sup>1</sup>, in like manner, so nearly as circumstances admit, as if he were an officer, and to a person subject to military law as a soldier<sup>2</sup>, in like manner, so nearly as circumstances admit, as if he were a soldier, subject nevertheless to the restrictions contained in the Army Act, and to this qualification—that nothing in these rules shall confer on any person not an officer or soldier any jurisdiction or power as an officer or soldier.



(D) Nothing in these rules shall be construed to be contrary to or inconsistent with any provision of the Army Act.

1. See A.A. 175.
2. See A.A. 176.

136. These rules shall, save as otherwise expressly provided, apply to the Channel Islands and the Isle of Man in like manner as if they were part of the United Kingdom<sup>1</sup>.

Application of rules to Channel Islands, and Isle of Man.

1. The Channel Islands and Isle of Man are Colonies for the purpose of imprisonment and of detention; see A.A. 187 (2), and r. 130.

137. These rules shall apply in every place, whether within or without His Majesty's dominions.

Extent of application of rules.

138. These rules may be cited as the Rules of Procedure, 1907.

Short title.

139. (A) The foregoing rules shall, if promulgated in any general order in any place, come into full force in that place from and after the date named in the general order, and so far as they are not already in operation on the thirty-first day of December next after the date thereof shall come into operation on that day; and on the day on which these rules come into operation in any place, the Rules of Procedure, 1899, as amended by any subsequent rules, so far as they are then in force, shall determine.

Commencement of rules.

(B) Any court-martial, proceeding, or thing held, done, or commenced under the last-mentioned Rules of Procedure, shall be as valid, and may be completed and carried into effect as if those rules were still in force.

His Majesty has made the foregoing Rules in pursuance of the Army Act, and those Rules will therefore be observed by all persons concerned.

(Signed) R. B. HALDANE.

War Office,  
20th August, 1907.

The foregoing Rules are to be observed by the Royal Marine Forces when subject to the Army Act, until further Rules are made in pursuance of Section 70 of the said Act.

Admiralty,  
20th August, 1907.

(Signed) TWEEDMOUTH.  
(Signed) J. A. FISHER.

## Appendices to Rules of Procedure, 1907.

### App. I.

## FIRST APPENDIX.

### FORMS OF CHARGES.

#### NOTE AS TO USE OF FORMS OF CHARGES.

(1.) Every charge-sheet will begin as shown in the forms in Part I of the forms of charges which are given as examples.

The description of an officer or soldier of the regular forces by his rank and corps is a sufficient averment that he is an officer or soldier, and that he is amenable to military law. In other cases, words must be added to show that the person is amenable to military law. (See Rule 10.)

(2.) The commencement of the charge-sheet (according to the form in Part I) will be followed by the charge or charges.

(3.) Each charge will consist of two parts: a statement of the offence, and a statement of the particulars. (Rule 11 (B).)

(4.) The statement of the offence will be in one of the forms in Part II.

(5.) Where two or more words or expressions occur in Part II, bracketed together one under the other, the particular word or expression should be used which most accurately describes the offence which appears to the officer framing the charge to be capable of proof by legal evidence.

(6.) Where the officer framing the charge is doubtful whether the offence so capable of being proved by legal evidence is more accurately described by one word, or expression, or by another, he may frame two or more alternative charges, each charge containing one of the words or expressions which appear to the officer to be applicable to the facts as capable of proof.

(7.) Where two or more of the words or expressions bracketed together appear, when coupled together with the word "and," accurately to describe the offence, the charge may couple together such words or expressions; but in no case must the charge couple with the word "or" two or more of the words or expressions bracketed together. (See Rule 11 (A).)

(8.) For example, a man may be charged with making away with his arms, ammunition, *and* necessities; but a charge for making away with his arms, ammunition, *or* necessities will be a bad charge.

(9.) A man should not be charged, however, with making away with by pawning *and* selling his arms and necessities, as in such case he is charged with at least two distinct offences, which ought to be included in at least two distinct charges, one for making away with by *pawning* his arms and necessities, the other for making away with by *selling* his arms and necessities; but he may, if desirable, be charged in four distinct charges: one for pawning his arms, another for pawning his necessities; a third for selling his arms and a fourth for selling his necessities.

(10.) In the former example (para. 8) the offence is the sale of some article which he is prohibited from selling, and is the same offence although committed in respect of different articles. In the second example (para. 9) there are two distinct offences of making away with his articles—(a) by pawning, (b) by selling—although committed in respect of the same objects—arms and necessaries.

(11.) In a few cases, shown in italics bracketed thus [ ] (as for instance, in s. 4 (1 *b*), s. 6 (1), (e), (g), and (h), and s. 24), words may be inserted in the charge which are not in the Act. In these cases the Act contains a general expression such as “other person,” or “other place,” or “other means,” and the officer framing the charge must omit these words, and insert a description of the person, place, or means.

(12.) Words inserted in brackets, thus [ ], without italics, must be adopted or not according to circumstances. For example, if the offender was not on active service, the words, “when on active service,” must be omitted.

(13.) In some cases (for example, s. 10 (4), s. 14, s. 15 (3), s. 16, and ss. 18, 27 (3) (4), and 37), the offence can only be committed by an officer or by a non-commissioned officer or by a soldier. The forms of charge do not contain any reference to this fact, inasmuch as it will appear from the commencement of the charge whether the accused is or is not an officer, non-commissioned officer, or soldier, and therefore capable of committing the offence. Care, however, must be taken not to charge an officer with an offence which a soldier only can commit, nor a soldier with an offence which an officer only can commit. In some cases the offence, even though not expressed in the Act to be limited to an officer or soldier, can, from the nature of things, only be committed by an officer or soldier. For example, the offence in s. 4 (1) (a) can only be committed by an officer, while the offence of losing regimental necessaries (s. 24) can only be committed by a soldier.

(14.) The statement of the offence in each charge will be followed by the appropriate statement of particulars, commencing with the words “in that he,” &c., or “in having,” &c., and stating in brief ordinary language what the accused is alleged to have done.

(15.) The words “in that he” will be followed by the verb in the past tense; the words “in having” will be followed by the past participle. The sentence stating the particulars will be framed more easily sometimes in the one form, sometimes in the other.

(16.) In the case of several charges, the particulars in one charge may refer to the particulars in another (Rule 11 (E)); as, for example, “in having done the acts alleged in the particulars to the first charge,” or “in that, at the place and time aforesaid, he was deficient in the necessaries above mentioned in the second charge, which it was his duty to have.” If the accused is acquitted on any charge in which full particulars were set out, and is convicted on a charge which referred to those particulars, the particulars referred to must be treated as having been set out in full in the charge on which the accused is convicted, and must be set out in full in any record of conviction in which the particulars are set out.

(17.) The statement of particulars should specify all the ingredients necessary to constitute the offence: for example, if the charge is under s. 9 (2), for disobeying a lawful command, the “particulars” must state the command, and show that it was given by a superior officer, and also how the accused disobeyed the command; while, if the charge is under s. 9 (1), the “particulars” should

## App. I.

also show how the command was given personally, and how the accused showed a wilful defiance of authority.

(18.) The "particulars" should always give a general description of the place where the offence was committed, such as the station or town or "the line of march," and, if it is material to the charge and is known, the exact place. The prepositions "near" or "between" may be used (for instance, "at or near," "between") to assist in describing a place not exactly known, but they must never be used where the exact place is of the essence of the offence.

(19.) The "particulars" should always state the date at which the offence was committed. If the exact date or time is unknown, the offence may be stated as having been committed "on or about" a particular day or time. This must never be done where the time is of the essence of the offence, as, for example, the case of absence without leave or being drunk on a post.

(20.) In some cases the offence may be stated with most accuracy as having been committed between two days or between two times: as, for instance, in the case of absence without leave, or of quitting a post; in other cases "between" may be used in consequence of the exact day or exact time not being known.

(21.) The words "or near" and "or about" and "between" should never be used unless it is impossible to express the exact place or time, or the exact place or time is clearly unimportant, or unless the word "between" is the most accurate expression of the place or time.

(22.) In many cases, as, for instance, where the defence is an alibi, the time and place may be of the utmost importance in proving that alibi, although it is not the essence of the offence.

(23.) There must be added at the end of the "particulars" a statement of any expenses, loss, or damage in respect of which the court-martial will be asked to award compensation under Section 137 or 138 (Rule 11 (F)). For example, there may be added to the "particulars" in the case of a charge of fraudulent enlistment, an averment to the effect that the accused thereby obtained a free kit, value\* pounds, and in the case of a charge under s. 10 (2) or (3), that the accused thereby damaged

's coat, to the value of shillings, and  
's watch to the value of

shillings; and other statements may be made, according to the facts.

(24.) If, however, the expenses, loss, or damage were caused by an act or omission which constitutes another offence, specially specified in the Act, that act or omission should be charged as a separate offence; for example, if a man deserts, and is deficient in his regimental necessaries, he should be charged in a separate charge for loss by neglect of his necessaries. It would not be proper to state it as a consequence of the desertion, or to award compensation for it upon a conviction for desertion only.

(25.) A charge for an offence under the Acts relating to the auxiliary forces or reserve forces, or any other Act other than the Army Act must, in accordance with the Rules of Procedure 11 and 134 (B), follow as nearly as possible the words of the Act; and where the enactment is in the alternative, each charge must, as in the following forms, state only one of the alternatives.

\* See K.R., paras. 561 and 563 and footnote.

## FORMS OF CHARGES.

App. I.

## PART 1.

*Commencement of Charge-Sheet.*

The accused [*number, rank, name, battalion, regiment*] a soldier [officer] of the regular forces, *or,*

The accused [*rank, name*] an officer of the regular forces on the active list on half-pay, *or,*

The accused [*rank, name*] retired pay [*or pensioner, or reservist*] employed on military service under the orders of an officer of the regular forces, *or,*

The accused [*rank, name*] an officer of the reserve of officers ordered on duty (or service), *or,*

The accused [*rank, name, corps (if any)*] an officer of the special reserve of officers, *or,*

The accused [*rank, name, corps*] an officer of the territorial force, *or,*

The accused [*number, rank, name, battalion, regiment*] a soldier of the territorial force out for training [*or otherwise subject to military law*], *or,*

The accused [*rank, name, regiment*] an officer of the militia [*or* an officer of the yeomanry commissioned since the 16th day of August, 1901], *or,*

The accused [*rank, name*] an officer of the volunteer battalion of the *regiment* [*or* an officer of the yeomanry commissioned before the 17th day of August, 1901], whose corps is on actual military service [*or who is otherwise subject to military law*], *or,*

The accused [*rank, name, corps*] an officer [a soldier] of a colonial force raised by order of His Majesty, and serving under the orders of an officer of the regular forces, *or,*

The accused [*name*] being a person subject to military law as an officer [under the provisions of s. 175 (7) [*or* (8)] of the Army Act], *or,*

The accused [*number, rank, name*] a special reservist out for training [*or otherwise subject to military law*], *or,*

The accused [*name*] a follower [sutler] of His Majesty's forces being subject to military law as a soldier [under the provisions of s. 176 (9) [*or* (10)] of the Army Act],  
is charged with—

*Where the offence has been committed by a person while subject to military law, and he has ceased to be so subject at the time when he is charged (in accordance with the provisions of s. 158 of the Army Act; as, for example, if a soldier has been transferred to the reserve, or discharged, or if the training period of a special reservist or man of the territorial force has expired, the commencement of the charge will run as follows:—*

The accused [*name*] is charged with having, while being [*number, rank*] of the *battalion* *regiment* [a soldier of

App. I. the regular forces] [*or otherwise subject to military law*], committed the following offence [offences], namely,

*or,*

The accused [*name*] is charged with having, while being [*number, rank*] of the                      battalion,                      regiment, a special reservist [*or man of the territorial force*] out for training [*or otherwise subject to military law*] committed the following offence [offences], namely,

## PART II.

### *Statement of Offence.*

#### OFFENCES IN RESPECT OF MILITARY SERVICE.

##### Section 4.

- (1a.) Shamefully { abandoning  
delivering up } { a garrison.  
a place.  
a post.  
a guard.
- (1b.) Using { compel  
means to } induce { a governor  
a commanding officer  
[or other person] } shamefully { abandon  
deliver up } { a garrison,  
a place,  
a post,  
a guard, } which it was his duty to defend.
- (2.) Shamefully casting away his { arms  
ammunition  
tools } in the presence of the enemy.
- (3a.) Treacherously { holding correspondence with  
giving intelligence to } the enemy.
- (3b.) Treacherously { sending a flag of truce to the enemy.  
Through cowardice }
- (4a.) Assisting the enemy with { arms.  
ammunition.  
supplies.
- (4b.) Knowingly { harbouring  
protecting } an enemy not being a prisoner.
- (5.) When a prisoner of war, voluntarily { serving with  
aiding } the enemy.
- (6.) Knowingly doing, when on active service, an act calculated to imperil the success of { His Majesty's forces.  
part of His Majesty's forces.
- (7.) Misbehaving { inducing others to  
misbehave } before the enemy in such manner as to show cowardice.

##### Section 5.

- (1.) When on active service, without { in order to secure prisoners.  
orders from his superior officer, in order to secure horses.  
leaving the ranks } on pretence of taking wounded men to the rear.
- (2.) When on active service { destroying  
damaging } property without orders from his superior officer.
- (3a.) When on active service, being taken prisoner { by want of due precaution.  
through disobedience of orders.  
through wilful neglect of duty.
- (3b.) After being taken prisoner when on active service, failing to rejoin His Majesty's service when able to rejoin the same.
- (4.) When on active service, without { holding correspondence with  
due authority } { giving intelligence to  
sending a flag of truce to } the enemy.
- (5.) When on active service { by word of mouth  
in writing  
by signals  
[otherwise]  
in action } { spreading reports  
calculated to  
create unnecessary  
alarm.  
despondency.
- (6.) When on active service { previously to going  
into action } { using words  
calculated  
to create } alarm.  
despondency.



## Section 6.

- (1A.) When on active service, leaving his commanding officer to go in search of plunder.
- (1B.) [When on active service,] leaving his  $\left\{ \begin{array}{l} \text{guard} \\ \text{picquet} \\ \text{patrol} \\ \text{post} \end{array} \right\}$  without orders from his superior officer.
- (1C.) [When on active service,] forcing a safeguard.
- (1D.) [When on active service,]  $\left\{ \begin{array}{l} \text{forcing} \\ \text{striking} \end{array} \right\}$  a soldier when acting as sentinel.
- (1Aa.) [When on active service,]  $\left\{ \begin{array}{l} \text{the provost-marshall} \\ \text{an assistant provost-marshall} \\ \text{an officer} \\ \text{a non-commissioned officer} \\ \text{[other person]} \end{array} \right\}$  legally exercising authority } under on behalf of { the provost-marshall.
- (1Ab.) [When on active service and] when called on, refusing to assist in the execution of his duty  $\left\{ \begin{array}{l} \text{the provost-marshall} \\ \text{an assistant provost-marshall} \\ \text{an officer} \\ \text{a non-commissioned officer} \\ \text{[other person]} \end{array} \right\}$  legally exercising authority } under on behalf of { the provost-marshall.
- (1Ac.) [When on active service,] doing provisions } to the forces.  
violence to a person bringing supplies
- (1Bb.) [When on active service,]  $\left\{ \begin{array}{l} \text{property} \\ \text{person} \end{array} \right\}$  of an inhabitant of } the country in which he was serving.  
committing an offence against the } of a resident in
- (1C.) [When on active service,]  $\left\{ \begin{array}{l} \text{house} \\ \text{[other place]} \end{array} \right\}$  in search of plunder.  
breaking into a
- (1D.) [When on active service,]  $\left\{ \begin{array}{l} \text{discharging firearms} \\ \text{drawing swords} \\ \text{beating drums} \\ \text{making signals} \\ \text{using words} \\ \text{[any means whatever]} \end{array} \right\}$  intentionally } in action.  
occasioning false alarms } on the march.  
by } in the field.  
[elsewhere.]
- (1Aa.) [When on active service,]  $\left\{ \begin{array}{l} \text{parole} \\ \text{treacherously making} \\ \text{watchword} \\ \text{countersign} \end{array} \right\}$  to a person not entitled to receive it.  
known the
- (1Ab.) [When on active service,]  $\left\{ \begin{array}{l} \text{parole} \\ \text{treacherously giving a} \\ \text{watchword} \\ \text{countersign} \end{array} \right\}$  different from what he received.
- (1C.) [When on active service,]  $\left\{ \begin{array}{l} \text{detaining} \\ \text{appro-} \\ \text{priating} \\ \text{to his} \\ \text{own} \end{array} \right\}$  corps  $\left\{ \begin{array}{l} \text{contrary to} \\ \text{orders} \\ \text{issued in} \\ \text{that respect} \end{array} \right\}$  provisions } proceeding to  
irregularly } own detachment } supplies } the forces.
- (1D.) When a soldier acting as sentinel  $\left\{ \begin{array}{l} \text{sleeping on his post.} \\ \text{being drunk on his post.} \\ \text{leaving his post before he was regularly relieved.} \end{array} \right\}$
- (2A.) By  $\left\{ \begin{array}{l} \text{discharging firearms} \\ \text{drawing swords} \\ \text{beating drums} \\ \text{making signals} \\ \text{using words} \\ \text{[any means whatever]} \end{array} \right\}$  negligently } in action.  
occasioning } on the march.  
false } in the field.  
alarms } [elsewhere.]
- (2Aa.) Making known the  $\left\{ \begin{array}{l} \text{parole} \\ \text{watchword} \\ \text{countersign} \end{array} \right\}$  to a person not entitled to receive it.
- 2Ab.) Without good and sufficient cause  $\left\{ \begin{array}{l} \text{parole} \\ \text{watchword} \\ \text{countersign} \end{array} \right\}$  different from what he received.  
giving a

## MUTINY AND INSUBORDINATION.

## Section 7.

- (1) { Causing  
Conspiring with other  
persons to cause } a mutiny } in forces belonging { regular forces.  
sedition } to His Majesty's { reserve forces.  
auxiliary forces.  
navy.
- (2a.) Endeavouring to seduce a { regular forces  
person in His Majesty's { reserve forces  
auxiliary forces } from allegiance to His Majesty.  
navy
- (2b.) Endeavouring to persuade { regular forces  
a person in His Majesty's { reserve forces  
auxiliary forces } to join in { a mutiny.  
sedition.  
navy
- (3a.) Joining in { a mutiny } in forces belonging to His Majesty's { regular forces.  
sedition { reserve forces.  
auxiliary forces.  
navy.
- (3b.) Being present at and { a mutiny } in forces belonging to His { regular forces  
not using his utmost { sedition Majesty's { reserve forces  
endeavours to sup- { } auxiliary forces.  
press { } navy.
- (4.) After { an actual mutiny } in forces { regular forces  
coming { an intended mutiny } belonging { reserve forces  
to the { actual sedition } to His { auxiliary forces  
know- { intended sedition } Majesty's { navy  
ledge of { } { } { } failing to inform  
without delay  
his commanding  
officer of the  
same.

## Section 8.

- (1.) { Striking  
Using violence to  
Offering violence to } his superior officer, being in the execution of his office.
- (2a.) [When on active service,] { striking  
using violence to } his superior officer.  
offering violence to
- (2b.) [When on active service,] using { threatening  
insubordinate } language to his superior officer.

## Section 9.

- (1.) Disobeying, in such manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer in the execution of his office.
- (2.) [When on active service,] disobeying a lawful command given by his superior officer.

## Section 10.

- (1.) When concerned in a fray { refusing to obey  
striking  
using violence to } an officer who ordered him  
offering violence to } into arrest.
- (2.) { Striking  
Using violence to } a person in whose custody he was placed.  
Offering violence to
- (3.) Resisting an escort whose duty it was { to apprehend him.  
to have him in charge.
- (4.) Breaking out of { barracks.  
camp.  
quarters.

## Section 11.

- (1.) Neglecting to obey { general  
garrison } orders.  
{ other }

## DESERTION, FRAUDULENT ENLISTMENT, AND ABSENCE WITHOUT LEAVE.

## Section 12.

- (1.) { When on active service } deserting His Majesty's service.  
{ When under orders for } attempting to desert His Majesty's service.  
active service }
- (2.) { When on active service } persuading  
{ When under orders for } endeavouring to persuade } a person subject to mili-  
active service } procuring } tary law to desert from  
attempting to procure } His Majesty's service.

## Section 13.

- (1.) and (2.) Fraudulent enlistment.

(1.) **Assisting a person subject to military law to desert His Majesty's service.**

- 2.) When cognizant of { the desertion of the intended deserter } { of a person subject to military law not forthwith } { giving notice to his commanding officer. taking some steps in his power to cause the } { deserter intending deserter } to be apprehended.

(1a.) Absenting himself without leave.

- (1d.) Absenting himself without leave.
- (2a.) Failing to appear at the place of { parade } appointed by his commanding officer.
- (2b.) Without leave, before he was re- { rendezvous } appointed by his commanding officer.
- (2c.) Without urgent necessity, quitting the ranks.
- (3.) { When in camp } being { beyond the limits } general { orders, without a pass or written leave from his commanding officer.
- (3.) { When in garrison } found { fixed by } garrison { or written leave from his commanding officer.
- (3.) { When [elsewhere] } found { in a place prohibited by } [other] { or written leave from his commanding officer.
- 4.) Without leave from his commanding officer or due cause absenting himself from school when duly ordered to attend there.

## Section 16.

Behaving in a scandalous manner, unbecoming the character of an officer and a gentleman.

(a.)	<div>When charged</div> <div>with concerned</div> <div>in</div>	<div>the care</div> <div>the distri-</div> <div>bution</div>	<div>of public</div> <div>of regimental</div>	<div>money</div> <div>goods</div>	<div>stealing</div> <div>fraudulently</div> <div>misapplying</div> <div>embezzling</div>	the same.	
b.)	<div>When charged</div> <div>with concerned</div> <div>in</div>	<div>the care</div> <div>the distri-</div> <div>bution</div>	<div>of public</div> <div>of regi-</div> <div>mental</div>	<div>money</div> <div>goods</div>	<div>being con-</div> <div>cerned in</div> <div>the conniv-</div> <div>ing at the</div>	<div>stealing</div> <div>fraudulent</div> <div>misappli-</div> <div>cation</div> <div>embezzle-</div> <div>ment</div>	thereof.
(c.)	<div>When charged with</div> <div>When concerned in</div>	<div>the care</div> <div>the distribution</div>	<div>of public</div> <div>of regimental</div>	<div>goods</div>	<div>willfully</div> <div>damaging</div>	the same.	

(1a.) **Malingering.**

- (1a.) Maiming—disease.  
(1b.) { Feigning } infirmity.  
{ Producing }
- (2a.) Wilfully { maiming { himself with intent } himself } unfit for service.  
{ injuring { another soldier thereby to } such other  
render soldier
- (2b.) Causing himself to be { maimed } by some person, with intent thereby to render  
injured himself unfit for service.
- (3.) { Being wilfully guilty of misconduct by means of which misconduct he { produced aggravated disease,  
Wilfully disobeying orders by means } delayed the cure of } infirmity  
of which disobedience
- 4a.) { Stealing { money goods { the property of { a comrade.  
Embezzling } belonging to a regimental { an officer.  
mess,  
band,  
institution.
- { public money.  
public goods.
- (4b.) Receiving, knowing { stolen money goods { the property of { a comrade  
them to be { embezzled } belonging to a { an officer  
regimental mess,  
band,  
institution.  
{ public money.  
public goods.
- 5a.) Such an offence of a fraudulent nature as is mentioned in sub-section five of section eighteen of the Army Act.
- 5b.) Disgraceful conduct of { a cruel { kind.  
an indecent  
an unnatural

## DRUNKENNESS.

## Section 19.

Drunkenness.

## OFFENCES IN RELATION TO PERSONS IN CUSTODY.

## Section 20.

- (1.) When in command of a { guard  
picquet  
patrol  
post } [wilfully] releasing without proper authority a person committed to his charge.
- (2.) { Wilfully  
Without reason-  
able excuse } allowing to escape { a person } committed to his charge { keep.  
whom it was his duty to { guard.

## Section 21.

- 1a.) Unnecessarily detaining a { arrest  
person in  
confinement } without bringing him to trial.
- 1b.) Unnecessarily failing to bring a person's case before the proper authority for investigation.

- (2.) After having committed a person to the custody of { an officer  
a non-  
commissioned  
officer  
a provost-  
marshal  
an assistant  
provost-  
marshal } falling without reasonable cause to deliver { at the time of  
the commit-  
tal or as soon  
as practic-  
able  
within 24  
hours after  
such com-  
mittal } to the officer to the non-  
commissioned officer  
to the provost-mar-  
shal  
to the assistant-pro-  
vost-mar-  
shal { into whose  
custody the  
person was  
committed,  
an account  
in writing  
signed by  
himself of  
the offence  
with which  
the person  
so com-  
mitted is  
charged.
- (3.) When in command of a guard failing { as soon as he was  
relieved  
from { guard  
his { duty  
within twenty-  
four hours after  
a person was  
committed to  
his charge } to give in  
writing  
to the  
officer to  
whom  
he was  
ordered  
to re-  
port { that person's name.  
that person's offence so far as known to  
him.  
the name } of the officer { by whom  
the rank } of the [person] { the per-  
son was  
charged.  
the written } officer { by whom the  
account } [person] { person was  
given him } committed to  
by the } his custody.

## Section 22.

- (1.) When in { arrest  
confinement  
prison  
{ other lawful custody } } escaping.  
attempting to escape.

## OFFENCES IN RELATION TO PROPERTY.

## Section 23.

1. Conniving at the exaction of an exorbitant price for { house  
stall } let to a sutler.
2. { Laying a  
duty upon  
Taking a fee  
in respect of  
the sale of provisions  
Taking an  
advantage  
in respect of  
the sale of  
being inter-  
sted in } { the sale of merchandise } brought into { a garrison  
a camp  
a station  
a barrack  
a [place] } in which { com-  
mand  
autho-  
rity.  
has } { provisions  
for the use of some of His Majesty's  
forces.

Section 24.

- (1.) { Making away with by  
Being concerned in making  
away with by } { pawning  
selling  
destruction  
[otherwise] } { his arms.  
his ammunition.  
his equipments.  
his instruments.  
his clothing.  
his regimental necessaries.  
a horse of which he had charge.
- (2.) Losing by neglect { his arms.  
his ammunition.  
his equipments.  
his instruments.  
his clothing.  
his regimental necessaries.  
a horse of which he had charge.
- (3.) Making away with by { pawning  
selling  
destruction  
[otherwise] } a military decoration granted him.
- (4.) Wilfully injuring { his arms.  
his ammunition.  
his equipments.  
his instruments.  
his clothing.  
his regimental necessaries.  
a horse of which he had charge.  
a military decoration granted him.  
property belonging to { a comrade.  
an officer.  
a regimental mess.  
a regimental band.  
a regimental institution.  
public property.
- (5.) Ill-treating a horse used in the public service.

OFFENCES IN RELATION TO FALSE DOCUMENTS AND STATEMENTS.

Section 25.

- (1.) In a { report  
return  
muster roll  
pay list  
certificate  
book  
route  
[other  
document] } made by him  
signed by him  
of the contents of  
which it was his  
duty to ascertain  
the accuracy } knowingly making  
being privy to the  
making of { a false statement.  
a fraudulent state-  
ment.  
an omission with  
intent to defraud.
- (2.) { Knowingly, and  
with intent to } injure some  
person { suppressing  
making away with } a document  
defacing which it  
altering was his  
duty to produce.
- (3.) Where it was his official duty to make a declaration respecting any matter knowingly making a false declaration.

Section 26.

- (1.) When signing a document  
relating to { pay  
arms  
ammunition  
equipments  
clothing  
regimental  
necessaries  
provisions  
furniture  
bedding  
blankets  
sheets  
utensils  
forage  
stores } leaving in blank a material part for  
which his signature was a voucher.
- (2.) { Refusing to  
By culpable neglect  
omitting to } make { a report  
send { a return } when it was his duty to { make.  
send.





- (6a.) { Offering { menace to { a constable } to make him give billets contrary to  
Using { compulsion on { a civil officer } the Army Act.
- (6b.) { Using { menace to { a constable { tending to { deter { him from { his duty under  
Offering { compul- { a stable { to { discour- { perform- { the provisions  
sion on { sion on { a civil officer { to induce him to do { rage { of { of the Army  
{ something contrary to { to receive without his { consent, a { person { horse { relating to billeting.  
{ to furnish some accom- { not duly billeted upon him in pursuance of { to furnish some accom- { modulation which he is { not required to furnish by
- (7.) { Using { menace to { a person { tending to { consent, a { person { horse { the provisions of  
Offering { compulsion on { to oblige him { to furnish some accom- { modulation which he is { not required to furnish by

# OFFENCES IN RELATION TO IMPRESSMENT OF CARRIAGES.

## Section 31.

- (1.) Willfully demanding { carriages { which were not actually required for purposes  
animals { authorised by the Army Act.  
vessels  
aircraft
- (2.) Failing to comply with the provisions of the Army { the payment of sums due  
Act, relating to the impressment of carriages, as { for carriages.  
regards { the weighing of the load.  
{ to travel against the will  
of the person in charge  
thereof, beyond the  
proper distance.  
to carry against the will  
of the person in charge  
thereof, a greater  
weight than he was  
required by the said  
provisions to carry.
- (3.) Constraining { a carriage { furnished in pursuance of  
an animal { the provisions of the  
a vessel { Army Act relating to  
{ the impressment of  
carriages
- (4.) Failing to discharge as { a carriage  
speedily as practicable { an animal  
a vessel  
an airship  
an aeroplane  
[or other aircraft] { furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages.
- (5.) { Compelling { a carriage { furnished in pursuance of { baggage } not entitled to be  
Permitting { an animal { the provisions of { stores } carried.  
the com- { a vessel { of the Army { though  
pelling of { an airship { Act relating { not fur-  
of { an aero- { pressment { nished on  
{ [or other aircraft] { carriages to { a requis-  
{ take thereon { ition of  
{ emergency a { person } sick.
- (6.) { Ill-treating { a carriage { furnished in pursuance of the  
Permitting { an animal { provisions of the Army Act  
the ill-treat- { a vessel { relating to the impressment of  
ment of { an airship { carriages.  
{ an aeroplane  
{ [or other aircraft]
- (7.) { Using { menace to { a carriage { which he was not bound in  
Offering { compul- { a constable { to make { pursuance of the provisions of the Army Act  
sion on { sion on { him { provide { relating to the impress-  
{ something contrary to { to receive without his { consent, a { person { horse { ment of carriages, to  
{ to furnish some accom- { not duly billeted upon him in pursuance of { to furnish some accom- { modulation which he is { not required to furnish by  
{ to receive without his { consent, a { person { horse { provide.  
{ to travel against the will  
of the person in charge  
thereof, beyond the  
proper distance.  
to carry against the will  
of the person in charge  
thereof, a greater  
weight than he was  
required by the said  
provisions to carry.
- (8.) { Using { menace to { a constable { tending to { deter { him from { his duty  
Offering { compul- { sion on { to induce him to do { discour- { perform- { in relation  
sion on { sion on { a civil officer { something contrary to { rage { ing a { to animals.  
{ something contrary to { to receive without his { consent, a { person { horse { vessels.  
{ to furnish some accom- { not duly billeted upon him in pursuance of { to furnish some accom- { modulation which he is { not required to furnish by  
{ to receive without his { consent, a { person { horse { providing  
{ to travel against the will  
of the person in charge  
thereof, beyond the  
proper distance.  
to carry against the will  
of the person in charge  
thereof, a greater  
weight than he was  
required by the said  
provisions to carry.
- (9.) Forcing { a carriage  
an animal  
a vessel  
an airship  
an aeroplane  
[or other aircraft] { from the owner thereof.

(M.L.)

## OFFENCES IN RELATION TO ENLISTMENT.

## Section 32.

- (1.) After having been { discharged with disgrace from a part of His Majesty's forces dismissed with disgrace from the navy } { enlisting in the regular forces without declaring the circumstances of his } discharge. dismissal.

## Section 33.

- (1, 2.) Making a wilfully false answer to a question set forth in the attestation paper which was put to him by, or by direction of, the justice before whom he appeared for the purpose of being attested.

## Section 34.

- (1.) Being concerned in the enlistment for service in the regular forces of a man when he { knew had reasonable cause to believe } such man to be so circumstanced that by enlisting he committed an offence against the Army Act.
- (2.) Wilfully contravening { the enactments of the Army Act [other enactments] the regulations of the service } in a matter relating to the enlistment of soldiers of the regular forces.

## MISCELLANEOUS MILITARY OFFENCES.

## Section 35.

- (1.) Using { traitorous disloyal } words regarding the Sovereign.

## Section 36.

- (1.) Without due authority { verbally in writing by signal [otherwise] } disclosing { the numbers of the position of some forces some magazines of the forces some stores of the forces } at such time and in such manner as to have produced effects injurious to His Majesty's service.
- { some preparations for some orders relating to } { operations of some forces } { movements }

## Section 37.

- (1.) { Striking ill-treating } a soldier.
- (2.) After receiving the pay of { an officer a soldier } unlawfully detaining unlawfully refusing to pay } the same when due.

## Section 38.

- (1.) { Fighting, Promoting Being concerned in Conniving at fighting } a duel.
- (2.) Attempting to commit suicide.

## Section 39.

- (1.) On application being made to him { neglecting refusing } { to deliver over to the civil magistrate to assist in the lawful apprehension of } an officer a soldier { accused of an offence punishable by a civil court.

## Section 40.

- (1.) { An act Conduct Disorder Neglect } to the prejudice of good order and military discipline.

## Section 41.

- (1-4.) { When on active service In Gibraltar In some place not in the United Kingdom or Gibraltar and more than one hundred miles as measured in a straight line from any city or town in which he can be tried by a competent civil court for the offence } committing the offence of { treason. murder. manslaughter. treason-felony. rape.

(5.) Committing a civil offence, that is to say [state the offence according to English law, either using legal terms, e.g., arson, larceny, larceny from the person, assault, robbery, with violence, &c., or, in ordinary language, e.g., stealing, maliciously injuring property, setting fire to a house, &c.] (a)

(a) In describing a civil offence reference should be had to the Table of offences at the end of Ch. VII.

# Appendix I.—Illustration of Charge.

## Section 155.

(1-3.) {	{	Negotiating	{	the { sale	{	of a commission in His Majesty's regular	{	His Maje-	
		Acting as		purchase }		forces.			ty's regular
		agent for							
{	{	Aiding	{	the { giving	{	of any valuable	{	promotion in	
		Convincing		receiving }		consideration in			retirement
at		any exchange made in		respect of any		from		employment	
		manner not author-				in			
		ised by regulations							
		made in pursuance	{	sum of money	{	has been	{	given.	
		of the Regimental		[consideration]		received.			
		Exchanges Act, 1875,							
		and in respect of							
		which a							

## ILLUSTRATION OF CHARGE.

App. I.

*Notes.*—The following is an illustration of a complete charge-sheet, with statement of offences and particulars, as it would be placed before a district court-martial.

### CHARGE-SHEET

The accused, No. 153, Private John Smith, 2nd Battalion shire Regiment, a soldier of the regular forces, is charged with—

*Using threatening language to his superior officer—*

in that he

at Topsham Barracks, Exeter, on the 20th January, 19 , said to Serjeant William Robinson, the shire Regiment, "I will punch your head," or words to that effect.

First  
charge.  
Sec. 8 (2).

*Resisting an escort whose duty it was to have him in charge—*

in that he

at Exeter, on the 20th January, 19 , resisted the escort taking him to the guard detention room, and kicked Private John Jones, one of the said escort, and damaged the trousers of Private James Brown, another of the said escort, to the value of five shillings.

Second  
charge.  
Sec. 10 (3).

A. B.,

Exeter, Commanding Depot shire Regiment.  
22nd January, 19 .

To be tried by a district court-martial.

X. Y.,

Commanding No. District,  
(or Staff Officer who should sign for  
Commanding No. District.)

Exeter,  
24th January, 19 .

(M.L.)

2 T 2

*The following further Illustrations of Charges will be found useful.  
They are not part of the Appendix to the Rules of Procedure.*

### FURTHER ILLUSTRATIONS OF CHARGES.

*Note.*—The words in brackets in the following illustrations of charges do not necessarily form part of the charge, but are sometimes alternatives, and sometimes are inserted as aggravating or explaining the offence, or for the purpose of the award by the court of stoppages from pay.

Where the words in brackets are “when on active service” they alter the gravity of the charge, and are very material, but are inserted in brackets because the charge will be a good charge without them, although if they are omitted the charge will be for a less grave offence.

The words “soldier of the regular forces” in the description of the accused are not essential where he is described as belonging to a regiment or battalion in the regular forces. See, however, Note on p. 676.

A second charge may be added to the charge-sheet as an alternative to the first charge in those cases (some of which are mentioned in the notes) where it is doubtful whether the offence committed by the person amounted to one charge or to the other.

#### No. 1.

##### CHARGE-SHEET.

- Sec. 4 (2). The accused, No. , Private , Battalion,  
Regiment, a soldier of the Regular Forces, is charged with—  
*Shamefully casting away his arms in the presence of the enemy,*  
in that he, at , on , when on outlying picquet, and attacked  
by the enemy, shamefully cast away his rifle, left his picquet, and ran away.

#### No. 2.

##### CHARGE-SHEET.

- Sec. 4 (7). The accused, No. , Private , Battalion,  
Regiment, a soldier of the Regular Forces, is charged with—  
*Misbehaving before the enemy in such a manner as to show cowardice,*  
in that he, at , on , during an attack on , and  
when under the enemy's fire, fell out of the ranks, under pretence of being  
unable to march further.

#### No. 3.

##### CHARGE-SHEET.

- Sec. 5 (1). The accused, No. , Private , Battalion,  
Regiment, a soldier of the Regular Forces, is charged with—  
*When on active service, without orders from his superior officer, leaving the  
ranks on pretence of taking wounded men to the rear,*  
in that he, at , on , when in the ranks, and during an attack  
upon , without orders from his superior officer, on pretence  
of taking to the rear Lieutenant who was  
wounded, left the ranks.

#### No. 4.

##### CHARGE-SHEET.

- Sec. 5 (2). The accused, No. , Private , Battalion, Regiment,  
a soldier of the Regular Forces, is charged with—  
*When on active service, wilfully destroying property without orders from his  
superior officer,*  
in that he, on , in , and encamped near the village  
of , without orders from his superior officer, wilfully set fire to  
a dwelling-house, situate in the said village.

## No. 5.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, Sec 6 (1a)  
a soldier of the Regular Forces, is charged with—

*When on active service leaving his commanding officer to go in search of plunder,*  
in that he, on , when belonging to a force in military occupation  
of , and when marching with his battalion under Lieutenant-Colonel , through the town of , left his commanding officer, and went in search of plunder.

## No. 6.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, Sec 6 (1c).  
a soldier of the Regular Forces, is charged with—

*[When on active service] forcing a safeguard,*  
in that he, at , on , in , wilfully, and after being duly warned, entered a dwelling-house in street, at , in which, by orders of the General commanding, Serjeant had been placed as a safeguard, for the protection of the occupants and the property therein and took therefrom five bottles of wine, value , or thereabout.

## No. 7.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment. Sec. 6 (1-).  
a soldier of the Regular Forces, is charged with—

*[When on active service] forcing a soldier when acting as sentinel,*  
in that he, at , on , after being warned by the sentry on No. Post, Guard, not to pass, passed the said sentry

## No. 8.

## CHARGE-SHEET.

The accused, No. . Private , Battalion, Regiment, Sec 6 (1/).  
a soldier of the Regular Forces, is charged with—

*[When on active service] doing violence to a person bringing provisions to the forces,*  
in that he at , on assaulted one , a sutler, who was bringing into camp bread and vegetables for the use of the troops [and forcibly took from him a portion of the same, value ].

## No. 9.

## CHARGE-SHEET.

The accused, A.B., sutler, being subject to military law as a soldier by Sec. 6 (1/).  
reason of accompanying His Majesty's troops on active service in [Egypt], is charged with—

*When on active service committing an offence against the person of a resident in the country in which he was serving,*  
in that he, at , on , committed a rape on of

## No. 10.

## CHARGE-SHEET.

The accused, No. Private , Battalion, Regiment, Sec. 6 (1/).  
a soldier of the Regular Forces, is charged with—

*When on active service committing an offence against the person of an inhabitant of the country in which he was serving,*  
at , in [Egypt] on assaulted of in that he,

## No. 11.

## CHARGE-SHEET.

Sec. 6 (1g). The accused, No. , Private , Battalion, Regiment,  
a soldier of the Regular Forces, is charged with—  
[When on active service] breaking into a house in search of plunder  
in that he, at , in [Egypt] , on , broke open the front  
door of a dwelling-house No. in street, and entered it in  
search of plunder.

## No. 12.

## CHARGE-SHEET.

Sec. 6 (1h). The accused, No. , Private , Battalion,  
Regiment, a soldier of the Regular Forces, is charged with—  
[When on active service] by discharging fire-arms, intentionally occasioning  
false alarms on the march,  
in that he, on , when on the march with his Battalion  
between and , by intentionally discharging his rifle  
occasioned a false alarm.

*Note.*—If there is a doubt as to whether the discharge of the rifle was intentional,  
a charge similar to No. 14 can be added as an alternative in the same charge-sheet.

## No. 13.

## CHARGE-SHEET.

Sec. 6 (1k). The accused, No. , Private , Battalion, Regiment,  
a soldier of the Regular Forces, is charged with—  
When a soldier acting as sentinel [on active service] sleeping on his post,  
in that he, at , on , between 1 and 2 a.m. when sentry on  
No. Post Guard was asleep.

## No. 14.

## CHARGE-SHEET.

Sec. 6 (2a). The accused, No. , Private , Battalion, Regiment,  
a soldier of the Regular Forces, is charged with—  
By discharging fire-arms, negligently occasioning false alarms in camp,  
in that he, when encamped with , at , on  
by negligently discharging his rifle at about midnight, occasioned a false  
alarm in the said camp.

## No. 15.

## CHARGE-SHEET.

The accused, No. , Serjeant , Battalion,  
Regiment, a soldier of the Regular Forces, is charged with—  
Causing a mutiny in forces belonging to His Majesty's Regular Forces,  
in that he, at , on , in his Barrack Room addressed  
Serjeant , Private , and other soldiers,  
Regiment, there assembled, in mutinous language, by advising them not to  
turn out at Commanding Officer's Parade at 10 o'clock next day in  
consequence of which language they, the said Serjeant  
and Private , and other soldiers of the said Battalion, did  
not turn out for the said parade.  
Endeavouring to persuade persons in His Majesty's Regular Forces to join in  
a mutiny,  
in that he, at , on , stated in the first charge  
endeavoured to persuade Lance-Corporal , Battalion,  
Regiment, to join in a mutiny, and not to mount guard, for which duty he,  
the said Lance-Corporal, had been duly warned.

First charge.  
Sec. 7 (1).

Second charge.  
Sec. 7 (2b).

## No. 16.

## (Joint Trial.)

## CHARGE-SHEET.

Sec. 7 (3a). The accused persons, No. , Private, , Battalion,  
Regiment, and No. , Private , Battalion,  
Regiment, soldiers of the Regular Forces, are charged with—



*Joining in a mutiny in forces belonging to His Majesty's Regular Forces,*  
 in that they, at \_\_\_\_\_, on [or about] \_\_\_\_\_ joined in a mutiny by  
 combining among themselves [and with other soldiers of the \_\_\_\_\_]  
 to resist and offer violence to their superior officers in the execution of their  
 duty.

*Notes.*—This charge is equally applicable to the case where a single person is charged.

## No. 17.

## CHARGE-SHEET.

The accused, No. \_\_\_\_\_, Bombardier \_\_\_\_\_, Battery, Royal Field Sec. 7 (4).  
 Artillery, a soldier of the Regular Forces, is charged with—

*After coming to the knowledge of an intended mutiny in forces belonging to His Majesty's Regular Forces, failing to inform without delay his commanding officer of the same,*  
 in that he, at \_\_\_\_\_, on \_\_\_\_\_, was present in the public-house known  
 as the Red Lion, where Bombardier \_\_\_\_\_, Gunner \_\_\_\_\_,  
 and other soldiers of \_\_\_\_\_ Battery, Royal Field Artillery were assembled,  
 and, in his hearing, agreed to cut up and destroy the harness belonging to  
 the said Battery, and failed to inform his commanding officer thereof.

## No. 18.

## CHARGE-SHEET.

The accused, No. \_\_\_\_\_, Private \_\_\_\_\_, Battalion, \_\_\_\_\_, Sec. 8 (1).  
 Regiment, a soldier of the Regular Forces is charged with—  
*Striking his superior officer, being in the execution of his office,*  
 in that he, at \_\_\_\_\_, on \_\_\_\_\_, struck with his fist in the face  
 Corporal \_\_\_\_\_, \_\_\_\_\_ Regiment, who was at the time  
 in command of an escort taking soldiers in custody to the guard-room.

## No. 19.

## CHARGE-SHEET.

The accused, No. \_\_\_\_\_, Private \_\_\_\_\_, Battalion, \_\_\_\_\_, Sec. 2 (2a).  
 Regiment, a soldier of the Regular Forces, is charged with—  
*[When on active service] offering violence to his superior officer, in that he*  
 at \_\_\_\_\_, on \_\_\_\_\_, when checked by Corporal \_\_\_\_\_  
 Regiment, attempted to strike the said corporal.

## No. 20.

## CHARGE-SHEET.

The accused, No. \_\_\_\_\_, Private \_\_\_\_\_, Battalion, \_\_\_\_\_, Sec. 8 (2b).  
 Regiment, a soldier of the Regular Forces, is charged with—  
*[When on active service] using threatening language to his superior officer,*  
 in that he, at \_\_\_\_\_, on \_\_\_\_\_, after having been  
 awarded a punishment by his commanding officer, said to Sergeant  
 \_\_\_\_\_, Regiment, "I'll be revenged on you for this, yet."

## No. 21.

## CHARGE-SHEET.

The accused, No. \_\_\_\_\_, Private \_\_\_\_\_, Battalion, \_\_\_\_\_, Sec. 9 (1).  
 Regiment, a soldier of the Regular Forces, is charged with—  
*Disobeying in such manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer, in the execution of his office,*  
 in that he, at \_\_\_\_\_, on \_\_\_\_\_, when personally ordered by  
 Captain \_\_\_\_\_, \_\_\_\_\_ Regiment, upon commanding  
 officer's parade, to take up his rifle and fall in, did not do so, divesting  
 himself at the same time of his waist belt, and saying, "I'll soldier no more,  
 you may do what you please."

## No. 22.

## CHARGE-SHEET.

- Sec. 9 (2). The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
*[When on active service] disobeying a lawful command given by his superior officer,*  
 in that he, at , on did not leave the canteen when ordered to do so, by Corporal , Regiment.

## No. 23.

## CHARGE-SHEET.

- Sec. 10 (1). The accused, Captain , Battalion, Regiment, an officer of the Regular Forces, is charged with—  
*When concerned in a quarrel, refusing to obey an officer who ordered him into arrest,*  
 in that he, on , in the ante-room of the officers' mess at , after having quarrelled with and struck Lieutenant Regiment, on being ordered into arrest by Lieutenant Regiment, refused to obey the order.

## No. 24.

## CHARGE-SHEET.

- Sec. 10 (2). The accused, No. , Corporal , Dragoons, a soldier of the Regular Forces, is charged with—  
*Striking a person in whose custody he was placed,*  
 in that he, at , on , when placed by Serjeant A. R., 9th Dragoons, in the custody of Police Constable , struck with his waist-belt, on the head, the said Police Constable.

## No. 24A.

## CHARGE-SHEET.

- Sec. 10 (3). The accused, No. , Private , Battalion. Regiment, a soldier of the Regular Forces, is charged with—  
*Resisting an escort whose duty it was to have him in charge,*  
 in that he, at , on , while under escort of Private and Private Battalion, Regiment, resisted the escort by kicking and struggling.

## No. 25.

## CHARGE-SHEET.

- Sec. 10 (4). The accused, No. , Drummer , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
*Breaking out of Barracks,*  
 in that he, at , on , broke out of barracks, when his duty required him to be in barracks.

N.B.—If the soldier was confined to barracks by any special duty the duty should be specified, e.g. "when a defaulter," or "when under open arrest."

## No. 26.

## CHARGE-SHEET.

- Sec. 11. The accused, No. , Serjeant Hussars, a soldier of the Regular Forces, is charged with—  
*Neglecting to obey camp orders,*  
 in that he, at , on bathed in the river camp, contrary to a camp order directing all persons to abstain from bathing in that part of the river.

## No. 27.

## CHARGE-SHEET.

The accused, William Robinson, being a person subject to military law as Sec. 11. an officer by reason of his accompanying His Majesty's Forces on active service in [Afghanistan,] and holding a pass entitling him to be treated on the footing of an officer, is charged with—

*Neglecting to obey camp orders,*  
in that he, on \_\_\_\_\_, entered the village of \_\_\_\_\_, contrary to a camp order directing all persons to abstain from entering that village.

## No. 28.

## CHARGE-SHEET.

The accused, No. \_\_\_\_\_, Private \_\_\_\_\_, Battalion, \_\_\_\_\_, Sec. 12 (1a).  
Regiment, a soldier of the Regular Forces, is charged with—  
[When on active service] deserting His Majesty's Service,  
in that he, at \_\_\_\_\_, on \_\_\_\_\_, absented himself  
from \_\_\_\_\_ Regiment, until apprehended at \_\_\_\_\_  
on \_\_\_\_\_ by the civil power, as a stowaway on board the  
steamer \_\_\_\_\_, which was about to leave the harbour  
for \_\_\_\_\_.

## No. 29.

## CHARGE-SHEET.

The accused, No. \_\_\_\_\_, Private \_\_\_\_\_, Battalion, \_\_\_\_\_, Sec. 12 (1a).  
Regiment, a soldier of the Regular Forces, is charged with—  
[When on active service] attempting to desert His Majesty's Service,  
in that he, at \_\_\_\_\_, on \_\_\_\_\_, absented himself from his battalion  
and concealed himself in a back room of a house situate in \_\_\_\_\_,  
and when apprehended by the military police on the same day was partly  
dressed in plain clothes.

*Note.*—In the two preceding charges, if the soldier was under orders for active service, the charge will be the same, with the substitution of "under orders for active service" for "on active service."

## No. 30.

## CHARGE-SHEET.

The accused, No. \_\_\_\_\_, Private \_\_\_\_\_, Battalion, \_\_\_\_\_, Sec. 12 (1a).  
Regiment, a soldier of the Regular Forces, is charged with—  
*Deserting His Majesty's Service,*  
in that he, at \_\_\_\_\_, on \_\_\_\_\_, absented himself  
from \_\_\_\_\_ Regiment, until apprehended by the civil  
power at \_\_\_\_\_, on \_\_\_\_\_ [where he was in civil employment,  
and dressed in plain clothes].

## No. 31.

## CHARGE-SHEET.

The accused, No. \_\_\_\_\_, Private \_\_\_\_\_, \_\_\_\_\_, Dragoons, Sec. 12 (1a).  
a soldier of the Regular Forces, is charged with—  
[When under orders for active service]  
*Deserting His Majesty's Service,*  
in that he, at \_\_\_\_\_, on \_\_\_\_\_, when under orders for embarkation  
for active service, absented himself without leave from the  
\_\_\_\_\_ Regiment, from the \_\_\_\_\_ of \_\_\_\_\_ until  
the \_\_\_\_\_ of \_\_\_\_\_ with intent to avoid such embarkation.

## No. 32.

## CHARGE-SHEET.

The accused, No. \_\_\_\_\_, Private \_\_\_\_\_, Battalion, \_\_\_\_\_, Sec. 13 (1).  
Regiment, a soldier of the Regular Forces, is charged with—  
*Fraudulent enlistment,*  
in that he, at \_\_\_\_\_, on \_\_\_\_\_, when belonging to  
the \_\_\_\_\_ Regiment, without having fulfilled the conditions  
enabling him to enlist, enlisted into His Majesty's Regular Forces for general  
service [or for service in the \_\_\_\_\_ regiment], thereby obtaining a  
free kit, value \_\_\_\_\_.

## No. 32A.

## CHARGE-SHEET.

Sec. 13 (1). The accused, No. , Private , of the  
Battalion, Regiment, a soldier of the territorial force when embodied, is  
charged with—

*Fraudulent enlistment,*  
in that he, at , on , when belonging to the territorial  
force called out on embodiment, without having fulfilled the conditions  
enabling him to enlist, enlisted into His Majesty's regular forces for service  
in the Regiment, thereby obtaining a free kit, value

## No. 33.

## CHARGE-SHEET.

Sec. 14 (1). The accused, No. , Private , Dragoons, a soldier  
of the Regular Forces, is charged with—  
*assisting a person subject to Military Law to desert His Majesty's Service,*  
in that he, at , on [or about] , well knowing that  
Private , Regiment, was about to desert,  
provided him with a suit of plain clothes.

## No. 34.

## CHARGE-SHEET.

Sec. 15 (1a). The accused, No. , Private , Lancers, a soldier  
of the Regular Forces, is charged with—  
*Absenting himself without leave,*  
in that he, at , absented himself without leave from  
tattoo roll call on till 7.30 a.m. on

## No. 35.

## CHARGE-SHEET.

First charge. The accused, No. , Private , Battalion,  
Sec. 15 (1a). Regiment, a special reservist out for training, is charged with—  
*Absenting himself without leave,*  
in that he, at , when his battalion was out for training absented  
himself at 9 a.m. on till 11.15 a.m. on  
*Losing by neglect his equipment and regimental necessaries.*  
Second charge. in that he, at , on or about , was deficient of one  
Sec. 24 (2). waist belt value four shillings and tenpence, one pair of socks value eight-  
pence, one shirt value four shillings, and one razor and case value fivepence.

*Note.*—All articles of clothing and necessaries issued to a special reservist  
are the property of the public. The value of such articles should therefore  
be given in the charge, and stoppages should form part of the sentence.

## No. 36.

## CHARGE-SHEET.

Sec. 15 (2). The accused, No. , Gunner , Battery, Royal Field  
Artillery, a soldier of the Regular Forces, is charged with—  
*Failing to appear at the place of rendezvous appointed by his commanding  
officer,*  
in that he, at , on , when in billet  
at that place, failed to appear at the market square in that town at a.m.,  
the place of rendezvous duly appointed by , his commanding officer.

*Note.*—When the charge is laid under this sub-section it is necessary to  
prove that the place of parade specified in the particulars is the place  
appointed by the C.O., and that the hour of such parade has also been so  
appointed.

## No. 37.

## CHARGE-SHEET.

The accused, No. , Bugler , Battalion,  
Regiment, a soldier of the Regular Forces, is charged with—  
*When in camp being found beyond the limits fixed by Regimental Orders  
without a pass or written leave from his commanding officer,*  
in that he, when encamped near Exeter, was found on , in  
Topsham, a place beyond the limits fixed by regimental orders, without a  
pass or written leave from his commanding officer.

## No. 38.

## CHARGE-SHEET.

The accused, Lieutenant , Regiment, an officer of the Sec. 16. Regular Forces, is charged with—

*Behaving in a scandalous manner unbecoming the character of an officer and a gentleman,*  
in that he, at , on , in payment of his mess account, gave Mr. , the mess man, a cheque for £31 on Messrs. Cox and Co., Army Agents, well knowing that he had not sufficient funds in the hands of the said Agents to meet the said cheque, and having no reasonable grounds for supposing that the aforesaid cheque would be honoured when presented.

## No. 39.

## CHARGE-SHEET.

The accused, Captain , Regiment, an officer of the Sec. 16. Regular Forces, is charged with—

*Behaving in a scandalous manner unbecoming the character of an officer and a gentleman,*  
in that he, at , on , [or between and ], wrote and sent to his commanding officer, Lieut.-Colonel , Regiment, an anonymous letter in which he made use of the following words:—

“By stopping leave and overworking your officers and men, you make the Regiment a hell upon earth. Your tyrannical conduct is a matter of general remark, and you may rely on it, unless you change, complaints will be made against you at the next General's Inspection.”

## No. 40.

## CHARGE-SHEET.

The accused, Captain , Battalion, Regiment, Sec. 17 (a). an officer of the Regular Forces, is charged with—

*When concerned in the care of regimental money, embezzling the same,*  
in that he, at , on or about , when as President of the Officers' Mess, Battalion, Regiment, he was concerned in the care of regimental money, having received a cheque for the sum of £15 (fifteen pounds), which it was his duty to place to the credit of the Bank Account of the Officers' Mess, Battalion, Regiment, applied the said sum of £15 (fifteen pounds) to his own use, with intent to defraud.

*Note.*—The particulars should state the acts which are alleged to have been done by the accused and to amount to embezzlement.

## No. 41.

## CHARGE-SHEET.

The accused, Quartermaster and Honorary Captain , Royal Army Sec. 17 (a). Medical Corps, an officer of the Regular Forces, is charged with—

*When charged with the care of public goods, fraudulently misapplying the same,*  
in that he, at , on [or about] , when charged with the care of ten rugs for hospital use, value or thereabout, sold the said rugs to for shillings, with intent to defraud.

## No. 42.

## CHARGE-SHEET.

The accused, No. , Corporal , Army Ordnance Corps, a Sec. 17 (a). soldier of the Regular Forces, is charged with—

*When concerned in the care of public goods, stealing the same,*  
in that he, at , on [or about] when employed in the care of Ordnance Stores, stole three Webley pistols value twenty-eight shillings each, part of the said stores.

## No. 43.

## CHARGE-SHEET.

- Sec. 17 (a). The accused, No. , Staff Serjeant  
Army Service Corps, a soldier of the Regular Forces, is charged with—  
*When concerned in the distribution of public goods, fraudulently misapplying the same,*  
in that he, at , on , when concerned in the  
distribution of coals to . Battalion, Regiment,  
issued four sacks thereof, weighing two cwt. each or thereabout, of a total  
value of , or thereabout, to , a person not  
entitled to receive them, with intent to defraud.

## No. 44.

## CHARGE-SHEET.

- Sec. 18 (1a). The accused, No. , Private , Battalion,  
Regiment a soldier of the Regular Forces, is charged with—  
*Malingering.*  
in that he, at , on , [between  
and ], with the intention of evading his duties as a soldier,  
counterfeited dumbness.

## No. 45.

## CHARGE-SHEET.

- Sec. 18 (1b). The accused, No. , Private , Hussars, a soldier of  
the Regular Forces, is charged with—  
*Feigning disease,*  
in that he, at , on , pretended to the Medical Officer  
in charge of troops that he was suffering from loss of speech, whereas he was  
not so suffering.

## No. 46.

## CHARGE-SHEET

- Sec. 18 (2a). The accused, No. , Private , Battalion,  
Regiment, a soldier of the Regular Forces, is charged with—  
*Wilfully maiming himself with intent thereby to render himself unfit for service,*  
in that he, at , on , when sentry on No.  
Post Guard, by discharging his rifle wilfully, blew off the fore and  
middle finger of his right hand.

## No. 47.

## CHARGE-SHEET.

- Sec. 18 (3). The accused, No. , Private , Battalion,  
Regiment, a soldier of the Regular Forces, is charged with—  
*Being wilfully guilty of misconduct by means of which misconduct he delayed the cure of disease,*  
in that he, at , on , [between  
and ], when under medical treatment for syphilitic sores,  
tampered with the said sores by the secret application of .

## No. 48.

## CHARGE-SHEET.

- Sec. 18 (3). The accused, No. , Private , Battalion,  
Regiment, a soldier of the Regular Forces, is charged with—  
*Wilfully disobeying orders by means of which disobedience he delayed the cure of his disease [or infirmity],*  
in that he, at , on , when under medical treatment for  
ophthalmia refused to submit to the treatment, viz., the application of lotion,  
deemed advisable to effect his cure, and as such ordered by  
in medical charge of the accused.



## No. 49.

## CHARGE-SHEET.

Sec. 18 (4a).

The accused, No. , Private (Lance-Corporal)  
 Hussars, a soldier of the Regular Forces, is charged with—  
*Stealing public money,*  
 in that he, at , on , when entrusted by Staff-Serjeant-Major with five sovereigns, public money, in a sealed envelope, for the purpose of handing them to Captain applied the same to his own use.

## No. 50.

## CHARGE-SHEET.

First  
 charge.  
 Sec. 18 (4a).

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*Stealing goods, the property of a comrade,*  
 in that he, in the [Cambridge Barracks at Portsmouth], on stole a watch, the property of Charles Williams, a private in the same regiment:

*Receiving, knowing them to be stolen, goods, the property of a comrade,*  
 in that he, at [Portsmouth], at the place and on the day aforesaid was in possession of a watch stolen from the said Charles Williams, which he knew to have been stolen.  
 Second  
 charge.  
 (Alternative.)  
 Sec. 18 (4b)

## No. 51.

## CHARGE-SHEET.

Sec. 18 (3a)

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*Such an offence of a fraudulent nature as is mentioned in sub-section 5 of Section 18 of the Army Act,*  
 in that he, at , on [or about] , when employed as an assistant in the regimental canteen, with intent to defraud, added water to a cask of ale belonging to the stores of the said canteen.

## No. 52.

## CHARGE-SHEET.

Sec. 19.

The accused, No. , Drummer , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*[When on active service] Drunkenness*  
 in that he, at , on , [when on duty (specify duty) or having been previously warned for duty (specify duty)] was drunk.

*Note.*—If the offender has been warned for special duty, e.g., night picket, or in aid of the civil power, the nature of that special duty should be stated.

In order to enable a court-martial to award field punishment, it is essential to allege "when on active service."

## No. 53.

## CHARGE-SHEET

Sec. 20 (1).

The accused, No. , Serjeant , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*When in command of a picket wilfully releasing, without proper authority, a person committed to his charge,*  
 in that he, at , on , when in command of a picket patrolling the town, released Private  
 Regiment, a person who had been committed to his charge by provost-serjeant

## No. 54.

## CHARGE-SHEET.

Sec. 20 (1),

The accused, No. , Serjeant , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*When in command of a guard releasing, without proper authority, a person committed to his charge,*  
 in that he, at , on , when in command of the barrack guard, without authority released Corporal  
 Battalion, Regiment, a person committed to his charge.

## No. 55.

## CHARGE-SHEET.

Sec. 20 (2).

The accused, No. , Corporal , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
*Wilfully allowing to escape a person committed to his charge,*  
 in that he, at Liverpool, on , when in command of an escort  
 conducting to Dublin Private Battalion,  
 Regiment, a person committed to his charge, without valid cause left the  
 person and escort, when the said person escaped.

*Note.*—Upon this charge a court-martial is competent to find the accused guilty of “without reasonable excuse, allowing to escape the person committed to his charge.” Sec. 56 (5) Army Act.

## No. 56.

## CHARGE-SHEET.

Sec. 20 (2).

The accused, No. , Corporal , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
*Without reasonable excuse allowing to escape a person committed to his charge,*  
 in that he, at , on , when conducting to his  
 Battalion, Private Battalion, Regiment,  
 a person committed to his charge [allowed a crowd to assemble round the  
 said person without taking reasonable means to prevent it, and thus] permitted  
 the escape of the said person.

## No. 57.

## CHARGE-SHEET.

Sec. 22.

The accused, No. , Private , Dragoon Guards, a  
 soldier of the Regular Forces, is charged with—  
*When in confinement escaping,*  
 in that he, at , on , when in confinement  
 (in the detention barrack) at , escaped.

## No. 58.

## CHARGE-SHEET.

Sec. 22.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
*When in lawful custody attempting to escape,*  
 in that he, at , on , when proceeding under  
 escort to , broke away from his escort and attempted to  
 escape.

## No. 59.

## CHARGE-SHEET.

First  
charge.

Sec. 24 (1).

Second  
charge.  
(Alternative.)

Sec. 24 (2).

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
*Making away with by pawning his clothing and regimental necessaries,*  
 in that he, at , on [or about] , pawned to ,  
 for the sum of five shillings, one pair of ankle boots and two brushes, and  
 one flannel shirt, articles of his clothing, and regimental necessaries.  
*Losing by neglect his clothing and regimental necessaries,*  
 in that he, at the place and on [or about] the day aforesaid, was deficient  
 of the articles of his clothing and regimental necessaries specified in the first  
 charge.

*Note.*—If the accused sold his clothing, &c., this same charge can be used with the substitution of “selling” for “pawning.”  
 The second charge should only be added where there is any doubt about the proof of the pawning or selling being sufficient.

## No. 60.

## CHARGE-SHEET.

Sec. 24 (2).

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
*Losing by neglect his equipments, clothing, and regimental necessaries,*  
 in that he, at , on [or about] , was deficient of one  
 waist-belt, value , one serge frock, two towels,  
 and two pairs of socks.

## No. 61.

## CHARGE-SHEET.

The accused, No. , Company Quartermaster-Serjeant  
Battalion, Regiment, a soldier of the Regular Forces, is charged  
with—

Sec. 25 (1).

*In a document signed by him knowingly making a fraudulent statement,*  
in that he, at , on [or about] , [between  
and ], in his capacity as Company Quartermaster-Serjeant of  
company, Regiment, fraudulently entered in his cash account for  
the month of , 19 , the following item—Washing bills, three pounds  
four shillings and two pence, whereas the actual amount paid by him in  
respect of such bills was two pounds fifteen shillings and four pence.

## No. 62.

## CHARGE-SHEET.

The accused, No. , Company Quartermaster-Serjeant  
Battalion, Regiment, a soldier of the Regular Forces, is charged  
with—

Sec. 25 (2).

*Knowingly and with intent to defraud, altering a document which it was his  
duty to preserve,*  
in that he, at , on [or about] [between  
and ], in the Military Savings Bank Form No. 2, statement of deposits  
and withdrawals for the month of , 19 , altered, with intent to  
defraud, the figure £2 sterling, representing a withdrawal made by  
Private , Regiment, and changed it into £3 sterling.

*Note.*—The name of the person whom the accused intended to defraud should be  
stated where possible.

## No. 63.

## CHARGE-SHEET.

The accused, No. , Company Quartermaster-Serjeant  
Battalion, Regiment, a soldier of the Regular Forces, is charged  
with—

Sec. 25 (2).

*Knowingly and with intent to defraud making away with a document which it  
was his duty to preserve,*  
in that he, at , on [or about] , with intent to defraud,  
burned the pay sheet of A Company, Regiment, for the month  
of , 19 .

## No. 64.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
Regiment, a soldier of the Regular Forces, is charged with—

Sec. 27 (1).

*Making a false accusation against a soldier knowing such accusation to be  
false,*  
in that he, at , on , when appearing before  
Captain , Regiment, to answer for a minor  
offence, used language to the effect following, that is to say: "The Com-  
pany Serjeant-Major is not fair in taking men for duty, and no one in the  
company can get on if he does not give him a bribe," meaning thereby the  
Company Serjeant-Major of his company, Regiment, well  
knowing the said statement to be false.

## No. 65.

## CHARGE-SHEET.

The accused, No. , Private  
the Regular Forces, is charged with—

Dragoons, a soldier of Sec. 27 (3).

*Falsely stating to his commanding officer that he had been guilty of desertion,*  
in that he, at , on , stated to , his  
commanding officer, that he was a deserter from , well  
knowing such statement to be false.

## No. 66.

## CHARGE-SHEET.

Sec. 29.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
*Wilfully giving false evidence when examined on oath before a court-martial,*  
 in that he, at , on , when examined as a witness  
 before a court-martial, stated on oath, that Private  
 Regiment, the person charged before the said court, was in his, the witness's,  
 company in his barrack-room, at , between 4 and 5 p.m.  
 on , well knowing such statement to be false.

## No. 67.

## CHARGE-SHEET.

Sec. 30 (3).

The accused, No. , Squadron Quartermaster-Serjeant  
 Regiment, a soldier of the Regular Forces, is charged with—  
*Failing to comply with the provisions of the Army Act, with respect to  
 the payment of the just demands of a person on whom soldiers under his command  
 and their horses had been billeted,*  
 in that he, at on , having himself with his horse,  
 and three soldiers Regiment, with their horses, been billeted on  
 Mr. , a keeper of a victualling house, failed to pay the said  
 Mr. , the sum of due to him for the said billets.

## No. 68.

## CHARGE-SHEET.

Sec. 32.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*After having been discharged with disgrace from a part [parts] of His  
 Majesty's Forces, enlisting in the Regular Forces without declaring the circum-  
 stances of his discharge [discharges],*  
 in that he, at , on , after having been discharged with  
 ignominy from , [for misconduct from  
 and on conviction for felony from ], enlisted in His Majesty's  
 Regular Forces for general service [for service in the Regiment],  
 without declaring the circumstances of his discharge [discharges].

## No. 69.

## CHARGE-SHEET.

Sec. 33.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*Making a wilfully false answer to a question set forth in the attestation  
 paper which was put to him by or by direction of the justice before whom he  
 appeared for the purpose of being attested,*  
 in that he, at , on , when he appeared before A.B.  
 a Justice of the Peace [or recruiting staff officer], for the purpose of being  
 attested for general service [or for service in the Regiment]—  
 to the question put to him, Have you ever served in the Army? answered,  
 "No"; whereas, he had served, as he well knew, in the Regiment.

## No. 70.

## CHARGE-SHEET.

Sec. 33.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*Making a wilfully false answer to a question set forth in the attestation  
 paper which was put to him by or by direction of the justice before whom he  
 appeared for the purpose of being attested,*  
 in that he, at , on , when he appeared before  
 A.B., a Justice of the Peace, [or recruiting staff officer] for the purpose of  
 being attested for general service [or for service in the  
 Regiment]—to the question put to him, Do you now belong to the Royal Navy?  
 answered "No"; whereas, he was serving, as he well knew, in  
 H.M.S. "

## No. 70A.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a special reservist, out for training, is charged with— Sec. 33.

*Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested,*  
 in that he, at , on , when belonging to the special reserve, when he appeared before A.B., a Justice of the Peace, [or recruiting staff officer] for the purpose of being attested for the special reserve, to the question put to him, "Do you now belong to the special reserve?" answered "No"; whereas he belonged, as he well knew, to the Battalion, Regiment.

*Note.*—If the reservist is not subject to military law when the charge is preferred against him he should not be charged under this section, but should be dealt with in a Civil Court under A.A. 99, and s. 18 (1) Reserve Forces Act 1882.

## No. 70B.

## CHARGE-SHEET.

The accused, No. Private , Battalion, Regiment, a soldier of the Regular Forces is charged with— Sec. 33.

*Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested,*  
 in that he, at , on , when he appeared before A.B., a Justice of the Peace, [or recruiting staff officer] for the purpose of being attested for general service [or for service in the Regiment], to the question put to him, "Do you now belong to the Army Reserve?" answered "No"; whereas he belonged to the Army Reserve Regiment, and by his enlistment obtained a free kit, value

*Note.*—The words "and by his enlistment obtained a free kit, value " will be added to the charge in all cases where the trial commences within three months of the date of the improper enlistment, but not otherwise.

## No. 71.

## CHARGE-SHEET.

The accused, No. , Gunner , Company, Royal Garrison Artillery, a soldier of the Regular Forces, is charged with— Sec. 38 (2).  
*Attempting to commit suicide,*  
 in that he, at , on , with intent to commit suicide, out his throat with a razor.

## No. 72.

## CHARGE-SHEET.

The accused, No. Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 40.  
*An act to the prejudice of good order and military discipline,*  
 in that he, at , on , when sentry over soldiers in custody while employed on fatigue duty in the barrack yard, surreptitiously gave to No. , Private , Regiment, one of the said soldiers in custody, a pipe and some tobacco.

## No. 73.

## CHARGE-SHEET.

The accused, No. Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 40.  
*Conduct to the prejudice of good order and military discipline,*  
 in that he, at , on , on returning as a soldier in custody to the guard-room on remand, said, "What the do I care [being the commanding officer of the accused]. He may go to for me," or words to that effect.

(M.L.)

2 U

## No. 74.

## CHARGE-SHEET.

- Sec. 40. The accused, No. , Private , Battalion,  
Regiment, a soldier of the Regular Forces, is charged with—  
*Conduct to the prejudice of good order and military discipline,*  
in that he, at , on , became unfit for duty, by  
reason of previous indulgence in alcoholic stimulants.

## No. 75.

## CHARGE-SHEET.

- Sec. 40. The accused, No. , Private , Battalion,  
Regiment, a soldier of the Regular Forces, is charged with—  
*An act to the prejudice of good order and military discipline,*  
in that he, at , on , made use of, or [was in possession  
of], a document purporting to be a genuine pass [to be signed by  
well knowing that it was not genuine [so signed].

## No. 76.

## CHARGE-SHEET.

- Sec. 40. The accused, No. , Corporal , Battalion,  
Regiment, a soldier of the Regular Forces, is charged with—  
*Neglect to the prejudice of good order and military discipline,*  
in that he, at , on , after being duly warned by Company  
[Serjeant-Major to parade the regimental defaulters at 8 p.m. on  
t day, neglected to do so.  
*Note.*—This form of charge is applicable when wilful disobedience is not  
imputed.

## No. 77.

## CHARGE-SHEET.

- Sec. 40. The accused, No. , Serjeant , Battalion,  
Regiment, a soldier of the Regular Forces is charged with—  
*Neglect to the prejudice of good order and military discipline,*  
in that he, at , between and , when in charge of  
the recreation room, negligently conducted the supply of refresh-  
ments authorised to be issued therein, and through such negligence caused a  
loss to that institution of [or thereabout].

## No. 78.

## CHARGE-SHEET.

- Sec. 41. The accused, No. , Private , Battalion,  
Regiment, a soldier of the Regular Forces, is charged with—  
*When on active service committing the offence of murder,*  
in that he, at [Ismaillia,] on [or about] , when on active service,  
did feloniously, wilfully, and of malice aforethought kill and murder one  
Humantoo, a native of the East Indies, a camp follower.

## No. 79.

## CHARGE-SHEET.

- Sec. 41. The accused, No. , Private , Battalion,  
Regiment, a soldier of the Regular Forces, is charged with—  
*Committing a civil offence, that is to say, burglary,*  
in that he, at , on , at about midnight, forced open  
the back door of the dwelling house of , at , and  
entered the said dwelling house, with intent to commit a felony [and  
feloniously took therefrom two silver candle-sticks value  
thereabout].

## No. 80.

## CHARGE-SHEET.

- Sec. 41. The accused, No. , Private , Battalion,  
Regiment, a soldier of the Regular Forces, is charged with—  
*Committing a civil offence, that is to say, robbery with violence,*  
in that he, at , on , feloniously assaulted  
and took from his person a silver watch and chain, value [or there-  
about].



## No. 81.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Sec. 41.  
 Regiment, a soldier of the Regular Forces, is charged with—  
*Committing a civil offence, that is to say, stealing,* First  
 in that he, at , on , [under pretence of making a charge.  
 purchase] stole from the shop of , a tobacconist, half a  
 pound of tobacco or thereabout, value , belonging to the  
 said  
 | *Committing a civil offence, that is to say, receiving stolen goods knowing* Second  
*them to have been stolen,* charge.  
 in that he, at , on , was in possession of half a (Alterna-  
 pound of tobacco or thereabout, value , the property of the tive.)  
 said , which he knew to have been stolen.

## No. 82.

## CHARGE-SHEET.

The accused, No. , Serjeant , Battalion, Sec. 41.  
 Regiment, a soldier of the Regular Forces, is charged with—  
*Committing a civil offence, that is to say, forgery,*  
 in that he, at , on [or about] , with intent to defraud,  
 forged the name of Captain to a post office order for four pounds  
 two shillings and sixpence [and thereby obtained the sum of four pounds two  
 shillings and sixpence].

## No. 83.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Sec. 41.  
 Regiment, a soldier of the Regular Forces, is charged with—  
*Committing a civil offence, that is to say, uttering counterfeit coin,*  
 in that he, at , on , in a public-house known as  
 the Royal Arms, uttered a counterfeit half-crown, knowing the same to be  
 counterfeit.

*Note.*—The offender utters counterfeit coin if he endeavours to pass it in payment  
 of goods, &c., though it be not accepted, or if he tries simply to get it changed  
 into other money.

## No. 84.

## CHARGE-SHEET.

The accused, No. , Private , T.R.F. Act.  
 Battalion, Regiment, a soldier of the territorial force out for annual s. 11.  
 training, is charged with—  
*After having been discharged with disgrace from a part [parts] of His*  
*Majesty's forces, enlisting in the territorial force without declaring the*  
*circumstances of his discharge [discharges],*  
 in that he, at , on , after having been discharged with  
 ignominy [for misconduct, &c.] from the Regiment,  
 enlisted in the territorial force for service in the Regiment of  
 , without declaring the circumstances of his discharge.

## No. 85.

## CHARGE-SHEET.

The accused, [name], belonging to the Army Reserve, is charged with— Reserve  
*Using insulting language to a non-commissioned officer acting in the execution Forces*  
*of his office, and who would be his superior officer if the accused were subject to Act 1882,*  
*military law,* sec. 4.  
 in that he, at , on , when receiving his pay from  
 , Company Quartermaster-Serjeant Regiment, said  
 to him, "You are a cheat," or words to that effect

(M.L.)

2 U 2

## No. 86.

## CHARGE-SHEET.

Reserve  
Forces  
Act 1882,  
sec. 15 (1) (b)

The accused, No. , Private  
Battalion, Regiment, a special reservist, is charged with—  
*Absenting himself without leave,*

in that he, at , on , without leave lawfully granted, or  
reasonable excuse, failed to appear for the annual training of his battalion,  
and remained absent until apprehended by the civil power at  
on

## No. 87.

## CHARGE-SHEET.

Reserve  
Forces  
Act 1882,  
sec. 15.

The accused, [name], belonging to the Army Reserve called out for  
annual training, is charged with—

*Absenting himself without leave,*

in that he, at , on , the place and time appointed  
for him to attend, without leave lawfully granted or reasonable excuse,  
failed to appear.

*Note.*—In charges preferred against non-commissioned officers and men belonging to the Special Reserve or Territorial Force under Sections 8 (1), 8 (2a), 8 (2b), 9 (1), and 9 (2), it is necessary to show in the statement of the offence and of the particulars, not only that the accused was himself subject to military law at the time the offence is alleged to have been committed, but also that the "superior officer" referred to in the charge, if belonging to the Special Reserve or Territorial Force, was subject to military law at the time.

Similarly, in charges framed under Sections 18 (4a), 18 (4b), 24 (4), 27 (1), 27 (2), 37 (1), and 39, the particulars of such charges should show that the "comrade" or "soldier" referred to therein, if belonging to the Special Reserve or Territorial Force, was subject to military law at the time the offence was committed.

*Example.**Charge-sheet.*

The accused, No. , Private  
Battalion, Regiment, a Special Reservist [a soldier of the Territorial  
Force] out for training [or otherwise subject to military law], is charged with—  
A. A.  
Sec. 8 (3a).

*Offering violence to his superior officer,*

in that he, at , on , when checked by Serjeant  
Battalion, Regiment, who was at the time out for training [or otherwise  
subject to military law], attempted to strike the said serjeant.

## SECOND APPENDIX.

App. II

## FORMS AS TO COURTS-MARTIAL.

## FORMS FOR ASSEMBLY OF COURTS-MARTIAL.

## No. 1.—General or District.

*Form of Order for the Assembly of a General or District Court-Martial.*

ORDERS BY \_\_\_\_\_ commanding the  
(Place, date.)

The detail of officers as mentioned below will assemble at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ for the purpose of trying by a court-martial the accused person [persons] named in the margin [and such other person or persons as may be brought before them].\*

PRESIDENT.

is appointed president.†

MEMBERS.

WAITING MEMBERS.

JUDGE-ADVOCATE.

has been [or where the convening officer has the appointment of a judge-advocate, is hereby] appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to

Signed this \_\_\_\_\_ day of \_\_\_\_\_

A B.

Note.—  
The president must be named. The members and the waiting members may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named.

\* Any opinion of the convening officer with respect to the composition of the Court (see Rules of Procedure 20 and 21) should be added here, thus:

"In the opinion of the convening officer, officers of different corps are not, having due regard to the public service, available," or as the case may be.

† Add here, if the President is under the rank of field officer, and the officer convening the Court is not under that rank, "In the opinion of the convening officer a field officer is not, having due regard to the public service, available." In the case of a District Court-Martial, if the president is under the rank of captain, add, "In the opinion of the convening officer a captain is not, having due regard to the public service, available."

‡ The "unit," in the case of Royal Horse or Royal Field Artillery, is a Brigade.

## App. II.

## No. 2.—Regimental.

*Form of Order for the Assembly of a Regimental Court-Martial.*

orders by \_\_\_\_\_ commanding  
(Place, date.)

The officers mentioned below will assemble at \_\_\_\_\_  
on \_\_\_\_\_ for the purpose of trying by regimental court-martial  
the accused person [persons] named in the margin [and such other  
person or persons as may be brought before them].

PRESIDENT.

is appointed president. ¶

MEMBERS.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to

Signed this \_\_\_\_\_ day of \_\_\_\_\_

A.B.

¶ If the president is under the rank of captain, after the words "appointed president," add "the court-martial being held on the "line of march," or "the court-martial being held on board the \_\_\_\_\_, a ship\* commissioned by His Majesty," or "in the opinion of the convening officer a captain is not, having due regard to the public service, available."

\* If the ship is not His Majesty's ship insert "not."

## No. 3.—Field General.

[See Form of Proceedings, p. 700.]

## No. 4.—Declaration for Suspension of Rules.

*Form of Declaration of Military Exigencies or the Necessities of Discipline under Rule of Procedure 104.*

for the ne-  
cessities of  
discipline.]  
[or in-  
expedient.]  
State the  
rule or rules  
which  
cannot be  
observed.  
(See Rule  
104).

In my opinion [\*military exigencies, namely (state them)] render  
it [†impossible] to observe the provisions of rules‡  
on the trial of \_\_\_\_\_ by \_\_\_\_\_ court-martial assembled  
pursuant to the order of the \_\_\_\_\_ of \_\_\_\_\_  
Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

A.B.

[Instruction.—This declaration must be signed by the officer whose opinion is given, and will be annexed to the proceedings.]

App. II.

Army Form  
A. 9.

## FORM OF PROCEEDINGS OF COURTS-MARTIAL

*Form of Proceedings of a General Court-Martial (including some of the incidents which may occur to vary the ordinary course of procedure), with Instructions for the guidance of the Court.*

PROCEEDINGS OF A GENERAL COURT-MARTIAL, held at  
on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ by order of  
Commanding \_\_\_\_\_ dated the  
day of \_\_\_\_\_ 19\_\_\_\_.

## PRESIDENT.

Rank.	Name.	Regiment.
_____	_____	_____

## MEMBERS.

Rank.	Name.	Regiment.
_____	_____	_____
_____	_____	_____
_____	_____	_____

\_\_\_\_\_, Judge-Advocate.

At \_\_\_\_\_ Trial of\*  
o'clock the trial commences.

\* Here  
insert No.,  
Rank,  
Name and  
Regiment,  
and appoint-  
ment (if  
any).

N.B.—The proper Army Forms, to be obtained from Convening Officers, will be used in accordance with the instructions.

The same Form will be used for district courts-martial, and will apply as nearly as may be, with the substitution of "district" for "general," and with the omission, where there is no Judge-Advocate, of all reference to the Judge-Advocate.

For regimental courts-martial Army Form A. 9. will also be used, with the substitution of "regimental" for "general," and with the omission of all reference to the Judge-Advocate.

(1.) The order convening the Court is read, and [a copy thereof] is marked \_\_\_\_\_, signed by the president, and attached to the proceedings.

The charge-sheet and the summary [or abstract] of evidence are laid before the Court.

[Instruction.—All documents relating to the Court, or the matters before it, which are intended to form part of the proceedings (such as an order respecting military exigencies, or a letter answering any question referred to the convening officer) at whatever period of the trial they are received should be read in open Court, marked so as to identify them, signed by the president, and attached to the proceedings.]

Note:—Before certifying that the Court have satisfied themselves as provided by Rules 22 and 23, the President will, in every case where a Court of Inquiry has been held respecting a matter upon which a charge against the accused is founded, insert an asterisk after the words "Rules of Procedure 22 and 23," and enter in red ink and sign a footnote at the bottom of the first page of the proceedings, to the following effect:—

"I have compared the names of the officers who served upon the Court of Inquiry respecting the matter on which the \_\_\_\_\_ (first) charge against the accused has been founded, with those of the officers detailed to serve on this Court-Martial.

\_\_\_\_\_  
"(Signature of President.)"

\*\* Here insert reason.  
 ‡ Here insert Rank, Name and Regiment.

† Here state Rank and Name, and Regiment (if any).

The Court satisfy themselves that is not available to  
 serve owing to\*\*

§ waiting member takes his place as a member of the court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

(2.)†

appears as prosecutor, and takes his place.

The above-named, the accused, is brought before the Court.

#### VARIATION.

[Qualification to be stated.

‡ appears as counsel for the prosecutor.

‡ appears to assist [or as counsel for] the accused.

The names of the president and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as president, or by any of the officers whose names you have heard read over?

Answer by accused.

No.

[Instruction.—The questions are to be numbered throughout consecutively in a single series. The letters Q. and A. in the margin may stand for Question and Answer respectively.]

#### VARIATIONS.

##### CHALLENGING OFFICERS.

Answer.—I object to

Question to Accused.—Do you object to any other person?

(This question must be repeated until all the objections are ascertained.)

Answer.—

[If the president is objected to, that objection will be dealt with first, otherwise, an objection to the junior officer will be disposed of first.]

##### Objection to the President.

Question to accused.—What is your objection to me as president?

Answer by accused.—

The accused, in support of his objection to the president, requests permission to give evidence himself and [or] to call

&c., &c.

The accused gives evidence himself and [or] is called into Court, and is questioned by the accused.

The Court is closed to consider the objection.

Decision.—The Court disallow the objection.

The Court is re-opened, and the above decision is made known to the accused.

or

Decision.—The Court allow the objection.

The Court is re-opened, and the above decision is made known to the accused, and the Court adjourn.

##### Objection to Member.

Question to accused.—What is your objection to (the junior officer objected to)?

Answer by accused.—

The accused in support of his objection to , requests permission to give evidence himself and [or] to call

&c., &c.

The accused gives evidence himself and [or] is called into Court, and is questioned by the accused

The Court is closed to consider the objection.

Decision.—The Court disallow the objection.



The Court is re-opened, and the above decision is made known to the accused. App. 11.

or,

*Decision.*—The Court allow the objection.

The Court is re-opened, and the above decision is made known to the accused.

retires.

*Fresh Member.*—<sup>\*</sup> takes his place as a member of the Court.

(*This only applies where there are waiting members of the court otherwise the court must adjourn.*)

He appears to the Court to be eligible and not disqualified to serve on this Court-Martial.

*Question to accused.*—Do you object to be tried by (the fresh member)?

*Accused.*—

(*If he objects, the objection will be dealt with in the former manner as the former objection.*)

*Question to accused.*—What is your objection to (the junior of the officers objected to)?

(*This objection will be dealt with in the same manner as the former objection.*)

The Court adjourn for the purpose of fresh members being appointed.

or,

The Court is of opinion that, in the interests of justice, and for the good of the service, it is inexpedient to adjourn for the purpose of fresh members being appointed, because [here state the reasons].

At o'clock on the court resumed their proceedings, and an Order appointing another president [or, fresh officers] is read, marked and attached to the proceedings.

The Court satisfy themselves with respect to such president [or officers] as provided by Rule of Procedure 22.

[*Instruction.*—The procedure as to challenging a new president and fresh officers, and the procedure, if any objection is allowed, will be the same as above.]

The president and members of the Court, as constituted after the above proceedings, are as follows:—

PRESIDENT.		
Rank.	Name.	Regiment.
_____	_____	_____
MEMBERS.		
Rank.	Name.	Regiment.
_____	_____	_____
_____	_____	_____
_____	_____	_____

The President, Members, and Judge-Advocate are duly sworn (also any officer under instruction).

[*Instruction.*—1. The witnesses if in Court, other than the prosecutor and the accused, should be ordered out of the Court at this stage of the proceedings.

2. Also any interpreter and short-hand writer should be now sworn.]

Do you object to \_\_\_\_\_ as interpreter?

Question to accused

A.

[*Instruction.*—In case of objection the same procedure will be followed as in the case of an objection to a member of the Court.]

Q. Do you object to as short-hand writer?  
A.

[Instruction.—In case of objection the same procedure will be followed as in the case of an objection to a member of the Court.]

CHARGE-SHEET.

Charge sheet.

(8.) The charge-sheet is signed by the president, marked and annexed to the proceedings.

VARIATION.

If the accused has elected to be tried instead of being dealt with summarily by his commanding officer.

The prosecutor informs the Court that the accused has elected to be tried by this Court instead of being dealt with summarily by his commanding officer.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Question to accused.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

A.

[Instruction.—Where there is more than one charge the foregoing question will be asked after each charge is read, the number of the charge being stated.]

[Instruction.—If the accused pleads guilty to any charge, the provisions of Rule 35 (B) must be complied with, and the fact that they have been complied with must be recorded. Where there are alternative charges and the accused pleads guilty to the less serious charge the court, if they decide to proceed upon the more serious charge, will enter after the plea as recorded: "The Court proceed as though the accused had not pleaded guilty to any charge."]

VARIATIONS.

Question to accused.

The accused objects to the charge.  
What is your objection?

A.

Decision.

The Court is closed to consider their decision.  
The Court disallow the objection [or, the Court allow the objection, and agree to report to the convening officer].  
The Court is re-opened, and the above decision is read to the accused.  
The Court proceed to the trial [or adjourn].  
The accused pleads to the general jurisdiction of the Court.  
What are the grounds of your plea?

Plea to jurisdiction.  
Question to accused.

A.

Q.

Do you wish to give evidence yourself or produce any evidence in support of your plea?

A.

Witnesses.

Witness is examined on oath.  
[Instruction.—The examination, &c., of the accused, if he wishes to give evidence, and of the witnesses called by the accused and of any witnesses called by the prosecutor in reply, will proceed as directed below in paragraphs (6) and (7). The prosecutor will be entitled to reply after all the evidence is given.]

Decision.

The Court is closed to consider their decision.  
The Court allow [or overrule] the plea [or resolve to refer the point to the convening authority, or decide specially that].  
The Court is re-opened, and the above decision is read to the accused.  
The Court proceed to the trial [or adjourn].

## VARIATION.

Accused, besides the plea of guilty [or, not guilty], offers a plea in bar of trial.

*Plea in bar of trial. Question to accused.*

What are the grounds of your plea?

*A.*

Do you wish to give evidence yourself or to produce any evidence in support of your plea?

*Q.*

*A.*

Witness examined on oath.

*Witnesses.*

[Instruction.—*The examination, &c., of the accused, if he wishes to give evidence, and of the witnesses called by the accused, and of any witnesses called by the prosecutor in reply, will proceed as directed below in paragraphs (6) and (7). The prosecutor will be entitled to reply after all the evidence is given.*]

The Court is closed to consider their decision.

*Decision.*

The Court allow the plea and resolve to adjourn [or to proceed to the trial on another charge] [or the Court overrule the plea].

The Court is re-opened, and the above decision is read to the accused. The Court adjourn [or proceed with the trial on another charge] [or proceed with the trial].

As the accused does not plead intelligibly [or refuses to plead to the above charge, or does not plead guilty to the above charge] the Court enter a plea of "Not guilty."

*Refusal to plead.*

## PROCEEDINGS ON PLEA OF GUILTY.

(4.) The accused [number, rank, name, regiment] is found guilty of the charge [all the charges] or is found guilty of the charge, and is found not guilty of the charge.

[Instruction.—*If the trial proceeds upon any charge to which there is a plea of not guilty, the Court will not proceed upon the record of the plea of guilty until after the finding on those other charges; and in that case the court will be re-opened and the charge on which the record is guilty must be read to the accused again.*]

The accused may in accordance with Rule 37 (B) make any statement he wishes in reference to the charge.]

The summary of evidence [or abstract of evidence] is read, marked, signed by the president, and attached to the proceedings.

[Instruction.—*If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence and to enable the confirming officer to know all the circumstances connected with the case will be taken as in paragraph 5. No address will be allowed.*]

## VARIATION.

The Court being satisfied from the statement of the accused [or the summary of evidence, or otherwise], that the accused did not understand the effect of the plea of "guilty," enters at the foot of page "C" of the proceedings: "The Court consider that the accused does not understand the effect of his plea of 'guilty,' alters the record, and enters a plea of "not guilty."

*Evidence as to mitigation of punishment.*

[Instruction.—*The Court will then proceed in respect of this charge as in paragraph 5.*]

Do you wish to make any statement in mitigation of punishment? No.

*Question to accused.*

*A.*

*or*

The accused in mitigation of punishment says [or if the statement is in writing, hands in a written statement, which is read, marked

## App. II.

, signed by the president, and attached to the proceedings].

[Instruction.—*If the statement of the accused is not in writing, and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.*

*If the statement is not in writing and not delivered by the accused himself the material portions should be recorded.*

*In either case any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in mitigation of punishment.]*

## VARIATION

The Court give permission to the accused to give evidence himself and [or] to call witnesses to prove his above statement that [here specify the statement which is to be proved].

[Instruction.—(1.) *The examination, &c., of witnesses called in pursuance of this permission will proceed in the same manner as under paragraph 6.*

(2.) *The procedure as to sentence, recommendation to mercy, and confirmation will be as in paragraphs 12 and 14.]*

Evidence  
as to  
character.  
Question to  
accused.

Do you wish to give evidence yourself or to call any witnesses as to character.

A.

Yes. [No.]

[Instruction.—(1) *The examination, &c., of witnesses as to character will proceed as in paragraph (6).*

(2) *Evidence as to character and particulars of service will be taken as in paragraph 12.]*

## PROCEEDINGS ON PLEA OF NOT GUILTY.

(5.) [If the prosecutor makes an address.] The prosecutor makes the following address, [or, if the address is written, hands in a written address, which is read, marked , signed by the president, and attached to the proceedings.]

[Instruction.—*Where the address of the prosecutor is not in writing, the Court should record so much as appears to them material, and so much as the prosecutor requires to be recorded.]*

First witness  
for  
prosecution.

\* Here insert  
his number,  
rank, name  
and regi-  
ment, and  
appoint-  
ment (if  
any), or  
other de-  
scription.

The prosecutor proceeds to call witnesses.

(\* ) being duly sworn is examined by the prosecutor.

Cross-examined by the Accused.

Re-examined by the Prosecutor.

## Examined by the Court.

App. II.

His evidence is read to the witness.

[Instruction.—*The fact that Rule 83 (B) has been complied with should be recorded.*]

The witness withdraws.

## VARIATIONS.

The accused declines to cross-examine this witness.

[Instruction.—*In every case where the accused does not cross-examine a witness for the prosecution this statement is to be made, in order that it may appear on the face of the proceedings that he has had the opportunity given him of cross-examination.*]

The Court, at the request of the accused, allow the cross-examination of the witness to be postponed.

The accused [or the prosecutor] objects to the following question :—

The Court is closed to consider their decision.

The Court overrule [or allow] the objection, and the Court is re-opened and the decision announced.

The witness, on his evidence being read to him, makes the following explanation or alteration :—

Examined by the prosecutor as to the above explanation or alteration.

Examined by the accused as to the above explanation or alteration.

The prosecutor and the accused decline to examine him respecting the above explanation or alteration.

being duly sworn, is examined by the prosecutor. *Second witness for prosecution.*  
 (The examination, &c., of this and every other witness proceeds as in the case of the first witness.)

## VARIATION.

The Court think it expedient to continue to sit after six o'clock in the afternoon, on the ground that [state the grounds].

At o'clock the Court adjourn until o'clock on the 19<sup>th</sup>, at o'clock, the Court re-assemble, pursuant to adjournment, present the same members as on the of *Adjournment. Second day.*

## VARIATIONS.

[Instructions.—(1) *If a member is absent, and his absence will reduce the Court below the legal minimum, and it appears to the members present that the absent member cannot attend within a reasonable time, the president or senior member present will thereupon report the case to the convening officer.*

(2) *If either the president or the Judge-Advocate is absent, and cannot attend within reasonable time, the Court will adjourn, and the president or senior member present will thereupon report the case to the convening authority. (See Rules of Procedure 66 and 102.)*

## App. II.

(Rank—Name—Regiment) being absent.

(The absence is accounted for.)

Absent  
member.A medical certificate [or letter, or as the case may be] is produced, read,  
marked and attached to the proceedings.

The Court adjourn until

or

There being present members, the trial is proceeded with. *not less than the legal minimum)*New Presi-  
dent.An order bearing date , appointing (the  
senior member) president of the Court-martial in the place of  
is read, marked , signed by the  
president, and attached to the proceedings.New Judge-  
Advocate.

The trial is proceeded with.

An order, bearing date , appointing , to act as  
Judge-Advocate in the place of , who , is read,  
marked , signed by the president, and attached to the  
proceedings, and the new Judge-Advocate duly sworn.

The trial is proceeded with.

[Instructions.—(1) *If the Court, in consequence of the adjournment having  
been prolonged by the senior officer on the spot, or otherwise, do not  
meet on the day to which they previously adjourned, or if the adjourn-  
ment was until further orders, the words "pursuant to adjournment"  
will be omitted from the above Form, and the cause of their meeting at  
the above time will be entered in the proceedings.*(2) *If the place of meeting has been altered by orders, or otherwise,  
the place of meeting and the reason for meeting at that place will be  
entered in the proceedings.]*

Examination [cross-examination] of continued.

The prosecution is closed.

## DEFENCE.

Question to  
accused.

- A. Do you apply to give evidence yourself as a witness ?  
 Q. Yes. [No.]  
 A. Do you intend to call any other witness in your defence ?  
 Q. Yes. [No.]  
 A. Is he a witness as to character only ?

## VARIATION.

[*If the accused is defended by counsel or by an officer having the rights  
of counsel, and does not apply to give evidence himself.*]Do you wish to make any statement in addition to the address made  
by your counsel [or ]?(6.) [Instruction.—*If the accused does not wish to give evidence  
himself, and calls no witnesses to the facts of the case, and, if defended  
by counsel or by an officer having the rights of counsel, does not wish  
to make a statement in addition to the address by that counsel or  
officer, adopt (6) and omit (7) and (8).*]The prosecutor addresses the Court upon the evidence for the  
prosecution as follows [or, if the address is written, hands in a written  
address, which is read, marked , signed by the president, and  
attached to the proceedings.][Instruction.—*Where the address of the prosecutor is not in writing  
the Court should record so much as appears to them material and so  
much as the prosecutor requires to be recorded.*]

Have you anything to say in your defence ?

Question to  
accused.(This question will always be asked, whether the accused has given  
evidence or not.)



## VARIATION.

App. II.

The Court, at the request of the accused, adjourn until  
enable him to prepare his defence.

to

The accused in his defence says [or hands in  
a written address, which is marked signed by the  
president, and attached to the proceedings].

[Instruction.—If the address of the accused is not in writing and is  
delivered by himself, the material portions should be taken down in  
the first person, and as nearly as possible in his own words.

If the address is not in writing and not delivered by the accused  
himself, the material portions should be recorded.

In either case any matter which is requested by or on behalf of the  
accused to be recorded should be recorded, and care must be taken,  
whether a request is made or not, to record every point brought  
forward in the defence or in mitigation of punishment.]

The accused calls the following witnesses as to character :

\* is duly sworn.

First witness  
as to  
character.

\* Here insert  
his number,  
rank, name,  
and regi-  
ment, and  
appoint-  
ment (if  
any), or  
other de-  
scription.

Examined by the Accused.

Cross-examined by the Prosecutor.

Re-examined by the Accused.

Examined by the Court.

His evidence is read to the witness.

[Instruction.—The fact that Rule 83 (B) has been complied with  
should be recorded.]

The witness withdraws.

## VARIATION.

The prosecutor declines to cross-examine this witness.

The witness, on his evidence being read to him, makes the following  
explanation or alteration.

Examined by the accused as to the above explanation or alteration.

Examined by the prosecutor as to the above explanation or alteration.

The accused and the prosecutor decline to examine him respecting the  
above explanation or alteration.

App. II. (7.) [Instruction.—*If the accused gives evidence himself, but calls no other witnesses to the facts of the case, adopt (7) and omit (6) and (8).*]

The accused takes his stand at the place from which other witnesses give their evidence.

The accused is duly sworn.

The accused gives his evidence.

Cross-examined by the Prosecutor.

The accused gives any evidence that another witness might give on re-examination.

Examined by the Court.

The evidence of the accused is read to him.

[Instruction.—*The fact that Rule 83 (B) has been complied with should be recorded.*]

The accused withdraws from the place from which he has given his evidence.

#### VARIATION.

The prosecutor declines to cross-examine the accused.

The accused, on his evidence being read to him, makes the following explanation or alteration.

Examined by the prosecutor as to the above explanation or alteration.

The prosecutor declines to examine him respecting the above explanation or alteration.

The prosecutor addresses the Court upon the evidence for the prosecution and the evidence of the accused as follows [*or, if the address is written, hands in a written address which is read, marked*], signed by the president, and attached to the proceedings].

[Instruction.—*When the address of the prosecutor is not in writing, the Court should record so much as appears to them material, and so much as the prosecutor requires to be recorded.*]

Have you anything to say in your defence ?

## VARIATION.

The Court, at the request of the accused, adjourn until  
enable him to prepare his defence.

to  
Question to  
accused.

The accused in his defence says  
hands in a written address, which is read, marked  
the president, and attached to the proceedings.]

[or,  
signed by

[Instruction.—If the address of the accused is not in writing,  
and is delivered by himself, the material portions should be taken  
down in the first person and as nearly as possible in his own words.

If the address is not in writing and not delivered by the accused  
himself, the material portions should be recorded.

In either case any matter which is requested by or on behalf of  
the accused to be recorded should be recorded, and care must be taken,  
whether a request is made or not, to record every point brought  
forward in the defence or in mitigation of punishment.]

The accused calls the following witnesses as to character :  
\* is duly sworn.

First wit-  
ness as to  
character.

Examined by the Accused.

\* Here insert  
his number,  
rank, name,  
and regi-  
ment, and  
appoint-  
ment (if  
any), or  
other  
description.

Cross-examined by the Prosecutor.

Re-examined by the Accused.

Examined by the Court.

His evidence is read to the witness.

[Instruction.—The fact that Rule 83 (b) has been complied with  
should be recorded.]

The witness withdraws.

## VARIATION.

The prosecutor declines to cross-examine this witness.

The witness, on his evidence being read to him, makes the following  
explanation or alteration.

Examined by the accused as to the above explanation or alteration.

(M.L.)

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## App. II.

Examined by the prosecutor as to the above explanation or alteration.

The accused and the prosecutor decline to examine him respecting the above explanation or alteration.

(8.) [Instruction.—*If the accused calls other witnesses to the facts of the case, whether he himself gives evidence or not, or if the accused, being defended by counsel or by an officer having the rights of counsel, wishes to make a statement in addition to the address by that counsel or officer, then omit paragraphs (6) and (7), and adopt (8).]*

Question to  
accused.

Have you anything to say in your defence?

## VARIATION

The Court, at the request of the accused, adjourn until to enable him to prepare his defence.

The accused in his defence says [or if his address is in writing, hands in a written address, which is read, marked signed by the president, and attached to the proceedings].

[Instructions.—(1) *If the defence of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.*

(2) *If the address is not in writing and is not delivered by the accused himself, the material portions should be recorded.*

(3) *In either case, any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]*

is duly sworn (a).

\* Here insert \*  
his number,  
rank, name,  
and regi-  
ment, and  
appoint-  
ment (if  
any), or  
other de-  
scription.

Examined by the Accused.

Cross-examined by the Prosecutor.

Re-examined by the Accused.

Examined by the Court.

His evidence is read to the witness.

[Instruction.—*The fact that Rule 83 (B) has been complied with should be recorded.*]

The witness withdraws.

(a) For the evidence of the accused, the form in (7) should be followed.

## VARIATIONS.

The prosecutor declines to cross-examine this witness.

The witness, on his evidence being read to him, makes the following explanation or alteration.

Examined by the accused as to the above explanation or alteration.

Examined by the prosecutor as to the above explanation or alteration.

The accused and the prosecutor decline to examine him respecting such explanation or alteration.

[Where the accused is defended by counsel or an officer having the rights of counsel.] The accused makes the following statement in addition to the address by his counsel [or ].(a)

The prosecutor [by leave of the Court] calls witnesses in reply.

The accused makes the following address [or, if the address is in writing, hands in a written address, which is read, marked , signed by the president, and attached to the proceedings].

The prosecutor makes the following reply [or, if the reply is in writing, hands in a written reply, which is read, marked , signed by the president, and attached to the proceedings];

or,  
The prosecutor declines to make a reply.

[Instruction.—Where the reply of the prosecutor is not in writing, the Court should record so much as appears to them material, and so much as the prosecutor requires to be recorded.]

If the address of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.

If the address is not in writing and not delivered by the accused himself the material portions should be recorded.

In either case, any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]

## VARIATIONS.

The Court, at the request of the accused, adjourn until to enable the accused to prepare his address.

The Court, at the request of the prosecutor, adjourn until to enable the prosecutor to prepare his reply.

## SUMMING UP.

(9.) The Judge-Advocate makes the following summing up [or, if the summing up is in writing, hands in a written summing up, which is read, marked , signed by the president, and attached to the proceedings].

## VARIATIONS.

The Judge-Advocate and the Court think a summing up unnecessary.

or,  
The Court, at the request of the Judge-Advocate, adjourn until to enable him to prepare his summing up.

(a) The accused must make his statement at the close of the case for the prosecution and before the address by his counsel; see R.P. 94.

## App. II.

## FINDING.

Finding.

(10.) The Court is closed for the consideration of the finding.

Not Guilty.

The Court find that the accused (*No.—Rank—Name—Regiment*) is not guilty of the charge [and honourably acquit him of the same], but is guilty of the

or,

Guilty.

is guilty of the charge [all the charges];

or,

is guilty of the charge, and guilty of the charge with the exception of the words [or with exception that]

or,

is not guilty of desertion, but is guilty of absence without leave;

[Instruction.—*Any special finding allowed by Section 58 of the Army Act may be expressed in this form.*]

or,

Special findings.

find that the accused did [*Here set out such particulars in any charge as the Court find to be proved*], but the Court doubt whether such facts constitute in law the offence stated in the charge, or in the charge, or in the charge, and therefore they find him guilty of the offence in such one of those charges as the facts in law constitute;

or,

adjourn for the purpose of consulting the convening [or, as the case may be, confirming] officer;

On re-assembly on the day of , and on reading the opinion of , which is marked and annexed to the proceedings, find that the accused, &c.

## PROCEEDINGS ON ACQUITTAL OF ALL THE CHARGES.

Acquittal.

(11.) The Court find that the accused (*No.—Rank—Name—Regiment*) is not guilty of the charge [or all the charges];

or,

is not guilty of the charge [or all the charges] and honourably acquit him of the same.

The findings are read in open Court, and the accused is released.

Signed at , this day of 19 .

(Judge-Advocate.)

(President.)

## VARIATION.

Insanity.

The Court find that the accused [*No.—Rank—Name—Regiment*] is, by reason of insanity, unfit to take his trial;

or,

is guilty of the charge or charges, but was insane at the time of the commission of the offences specified in those charges.

Signed at , this day of

(Signature)

(Judge-Advocate.)

(President.)

Confirmed,

At

this

day of

(Signature of Confirming Authority.)



## PROCEEDINGS ON CONVICTION.

*Before Sentence.*

*Evidence of  
character,  
&c.*

*Question by  
the Presi-  
dent.*

*Answer by  
the witness.*

(12.) \*The Court being re-opened the accused is again brought before it.

(*Number—Rank—Name—Regiment*) is duly sworn.

Have you any evidence to produce as to the character and particulars of service of the accused?

I produce this statement.

The witness hands in the statement, which should be in the following form :

\* In cases where a plea of "guilty" is proceeded with after the finding on a plea of "not guilty," this sentence will be struck out.

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STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE  
OF ACCUSED.

*Number—Rank—Name—Regiment* , [or as the case may be].

(1) The following is a fair and true summary of the entries in the regimental and squadron, troop, battery, or company conduct sheets of the accused, exclusive of convictions by a court-martial or a civil court, and of cases in which trial has been dispensed with :—

	Within last 12 months.	Since Enlistment.	
For	,	times	times.
For	,	times	times.

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

[Instruction.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.]

(2) The accused has not been previously convicted.

or,

The previous convictions of the accused by a court-martial or a civil court, and dispensations with trial under A.A. 73, are set out in the Schedule annexed to this statement.

(3) The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for beginning on the day of

(4) The accused has been in confinement, awaiting trial on the present charges, for days in civil custody, and days in military custody, making a total of days in custody, of which days were spent in hospital.

(5) The present age of the accused according to his attestation paper is

(6) The date of his attestation specified in his attestation paper is

(7) The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

(8) The accused is entitled to deferred pay or gratuity in respect of service.

(9) The accused is entitled to reckon service for the purpose of determining his pension, &c.

[Instruction.—If the Court is a general or district court-martial there should be added to the above the following] :—

(10) The accused is in possession of or entitled to no military

App. II. decoration or military reward which the Court can forfeit [or is in possession of or entitled to (state any military decoration or reward which the Court can forfeit)].

(11) (If the accused is a warrant officer not holding an honorary commission.) The accused before he was made a warrant officer last held the regimental rank of .

(12) (In the case of an officer or a warrant officer holding an honorary commission.) The accused holds in the army the [honorary] rank of , dated , and in his regiment [or corps or department] the rank of dated .

(13) The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of , years.

In the rank of , years.

In the rank of , years.

[Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.]

#### SCHEDULE.

Of convictions by a court-martial or civil court and of cases in which trial has been dispensed with of accused, No.

Rank , Name , of regiment [or as the case may be].

[Instruction.—A verbatim extract from the regimental book stating these convictions and dispensations with trial must be inserted.]

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this day of

A.B.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President and annexed to the proceedings.

Is the accused the person named in the statement which you have heard read?

Question by the President.

Answer by the witness.

Q.

Have you compared the contents of the above statement with the regimental books?

A.

Q.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

A.

Cross-examined by the Accused.

Re-examined.

or

The accused declines to cross-examine this witness.

His evidence is read to the witness as directed by R.P. 83 (B).

[Instruction.—Any further question will be put and any evidence produced which the Court require as to any point respecting the character and service of the accused on which the Court desire to have information for the purpose of their sentences.]

At the request of the accused, or by the direction of the Court, the regimental books, or a certified copy of the material entries therein, must be produced for the purpose of comparison with the statement.

The accused is entitled to call the attention of the Court to any entries in the regimental books, or in the certified copy above mentioned, and to show that they are inconsistent with the statement.

When all the evidence on the above matters has been given, the accused may address the court thereon.

If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment, in addition to that to be awarded by the Court (for instance, forfeiture or reduction of corps pay), the prosecutor must call the attention of the Court to the fact, and the Court must enquire into the nature and amount of that additional punishment.

NOTE.—Where an offence is unusually prevalent in a district or garrison, attention should be drawn to the fact periodically in local orders, and not by special directions to courts-martial.

Do you wish to address the Court

Question to  
the accused.

Answer.

The court is closed for the consideration of the sentence.

### SENTENCE.

[Instruction.—The provisions of Sections 44, 182, and 183 of the Army Act must be carefully attended to by the Court in passing sentence.]

The Court sentence the accused (No.—Rank—Name—Regiment.)

Sentence.

[Instruction.—The sentence is to be marginally noted in every case.]

In the case of an officer :—

(a) to suffer death by being shot [hanged].

Death.

(b) to suffer penal servitude for the term of years [or for life].

Penal  
servitude  
years.

(c) to be imprisoned with hard labour [without hard labour] for

Imprison-  
ment H.L.  
(or without  
H.L.)  
for

[Instruction.—(1) As to the term of imprisonment see below in the case of a soldier.

(2) A sentence of cashiering should precede a sentence of imprisonment or penal servitude.]

(d) to be cashiered.

Cashiered.

(e) to be dismissed from His Majesty's service.

Dismissed.

(f) [Where the officer's army rank is superior to his regimental rank.]

Forfeiture  
of seniority  
of rank.

to take rank and precedence as in the  
regiment as if his appointment to that  
regiment bore date the day of , and  
to take rank and precedence in the Army as if his  
appointment as bore date the day of

[Or, where the officer's army and regimental rank are the same.]

to take rank and precedence in the regiment  
and in the Army as if his appointment as  
bore date the day of

## App. II.

[Or, where the officer has no regimental rank.]  
to take rank and precedence in the Army as if his  
appointment as in the Army bore date  
the day of

[Instruction.—In each case the form may be varied so that the Court may exercise the power under the Army Act, s. 44 (f), and Rule of Procedure 47 of sentencing to forfeiture of seniority either in the corps, or in the Army, or in both.]

Reprimand  
or severe  
reprimand.

(g) to be reprimanded [or severely reprimanded].  
(h) to forfeit the [state the medal, clasp, and decoration, or any of them, which is to be forfeited] with any annuity or gratuity attached thereto.

Stoppages.

(i) to be put under stoppages of pay until he has made good the sum of in respect of or [and] until he has made good the value of the following articles, viz, 1 value 1 value, &c.

In the case of a soldier:—

Death.  
Penal servi-  
tude  
years.  
Impt. H.L.  
(or without  
H.L.)  
for  
Detention.  
for  
Field  
punishment  
No. 1  
for  
Field  
punishment  
No. 2  
for  
Forfeiture  
of pay  
for

(j) to suffer death by being shot [hanged].  
(k) to suffer penal servitude for the term of years [or for life].  
(l) to be imprisoned with hard labour [without hard labour] for  
(m) to undergo detention for  
(n) to suffer field punishment, that is to say, field punishment No. 1, for  
(o) to suffer field punishment, that is to say, field punishment No. 2, for  
(oo) to forfeit all ordinary pay for a period of

[Instruction.—(1) If a person charged is at the time of sentence undergoing imprisonment or detention under a former sentence, a new sentence of imprisonment or detention must not exceed such a term as will make up a period of two years from the date of the former sentence.]

(2) In the case of a non-commissioned officer, a sentence of reduction to the ranks should precede a sentence of penal servitude, imprisonment, detention, or field punishment, although those sentences necessarily involve a reduction to the ranks.

Where, for any reason, a court consider that a sentence of reduction to a lower rank in the case of a N.C.O. would be too severe a sentence, they can sentence the offender to forfeiture of seniority of rank.]

Discharged  
with  
ignominy.  
Dismissed.

(p) to be discharged with ignominy from His Majesty's service.  
(q) [if belonging to the territorial force] to be dismissed [from His Majesty's service].  
(r) [if a non-commissioned officer (a)].

Forfeiture of  
seniority,  
and  
reduction.

(1) to take rank and precedence as if his appointment to the rank of bore date ; or  
(2) to be reduced to the rank of serjeant; or  
(3) to be reduced to the rank of corporal; or  
(4) to be reduced to the rank of bombardier; or to be reduced to the rank of second corporal; or

(a) A sentence of reduction from or to an acting or lance rank is void; e.g., a sentence on a corporal to be reduced to lance-corporal is void. See A.A. 183 (3) note.

- (5) to be reduced to [a lower grade] or to be reduced **App. 11.**  
to the ranks.
- (s) to be fined *Fined l. s. d.*
- (t) to be put under stoppages of pay until he has made good *Stoppages.*  
the sum of \_\_\_\_\_ in respect of \_\_\_\_\_  
or [and] until he has made good the value of the  
following articles, viz., 1 \_\_\_\_\_ value \_\_\_\_\_,  
1 \_\_\_\_\_ value \_\_\_\_\_, &c.
- (u) to forfeit all ordinary pay for a period of *Forfeiture of pay.*
- (w) to forfeit [state number or all] good-conduct  
badge [or badges] with the pay attached thereto.
- to forfeit deferred pay in respect of [all or  
calendar months or \_\_\_\_\_ years] previous service.
- to forfeit [all or \_\_\_\_\_ years, or \_\_\_\_\_ calendar  
months] past service for the purpose of determining pension.
- to forfeit the [state medal, clasp, and decoration, or  
any of them, which is to be forfeited] (a).

[Instruction.—(1) An offender may be sentenced to all or any of the above forfeitures.

(2) In the case of a warrant officer, a district court-martial must use one of the following forms; a general court-martial may use them in lieu of, or in addition to, the foregoing forms, see s. 182 (2).]

(x) To be dismissed from the service.

or,  
(y) To be reduced in the list of his rank as if his appoint-  
ment thereto bore date the \_\_\_\_\_ day of \_\_\_\_\_

or,  
To be reduced to an inferior class of warrant officer;  
that is to say, to \_\_\_\_\_

or,  
(z) To be reduced to [a lower grade];

or,  
(zz) [If he was originally enlisted as a soldier, but not other-  
wise]  
To be reduced to the ranks.

#### RECOMMENDATION TO MERCY.

The Court recommend the accused to mercy on the ground that \_\_\_\_\_

The Court recommend that \_\_\_\_\_ of the service forfeited under section 79 of the Army Act shall be restored on the ground that \_\_\_\_\_

#### SIGNATURE.

Signed at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

(Signature) \_\_\_\_\_ (Signature) \_\_\_\_\_  
Judge-Advocate. President.

(a) Under P.W. Art. 1238, a soldier convicted by a court-martial of desertion, fraudulent enlistment, or an offence under A.A. 17 or 18, forfeits all medals and decorations (other than the Victoria Cross) without any award by the court-martial. In such cases therefore an award should not be made. The same is the case with a soldier discharged with ignominy, or for misconduct, &c.

When a court-martial sentences a soldier to forfeit any medal or decoration (other than the Victoria Cross) to which an annuity or gratuity is attached, the court should only sentence the offender to forfeit the medal or decoration as the case may be. The forfeiture of the annuity or gratuity attached thereto should not be mentioned in the sentence as it is consequential on the forfeiture of the medal or decoration. P.W. 1238.

A court cannot sentence an offender to forfeit the Victoria Cross.

## App. II.

## REVISION.

*Revision.* (13.) At \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, the Court re-assemble by order of \_\_\_\_\_ for the purpose of re-considering their Present, the same members as on the \_\_\_\_\_

## VARIATION.

[Instructions.—If a member is absent and the absence will reduce the Court below the required minimum, or if he is the president, and it appears to the members present that such absent member cannot attend within a reasonable time, the president, or, in his absence, the senior member present shall thereupon report the case to the convening officer.]

*Absent member.*

[Rank, name, regiment] being absent.  
[The absence is accounted for.]

A medical certificate [or letter, or as the case may be] is produced, read, marked \_\_\_\_\_, and attached to the proceedings.

There being present \_\_\_\_\_ [not less than the required minimum] members the Court proceeds.

*Revised finding.*

The letter [order or memorandum] directing the re-assembly of the Court for the revision, and giving the reasons of the confirming authority for requiring a revision of the finding [finding and sentence] [or sentence] is read, marked \_\_\_\_\_, signed by the president, and attached to the proceedings.

*Sentence.*

The Court, having attentively considered the observations of the confirming authority, and the whole of the proceedings:

a. do now revoke their finding and sentence, and find \_\_\_\_\_ and sentence the accused to \_\_\_\_\_

or,

b. do now revoke their sentence, and now sentence the accused, &c., &c., \_\_\_\_\_

or,

c. do now respectfully adhere to their sentence [or finding and sentence]

Signed at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .  
Judge-Advocate. President.

## CONFIRMATION.

*Confirmation.*

(14.) Confirmed,

or,

I vary the sentence so that it shall be as follows \_\_\_\_\_ and confirm the finding and the sentence as so varied,

or,

I confirm the finding and sentence of the Court, but mitigate [remit, or, commute \_\_\_\_\_].

or,

[Where it is necessary to confirm the special finding on several alternative charges.]

I confirm the finding on \_\_\_\_\_ and charges, and I confirm the special finding relating to the \_\_\_\_\_ and \_\_\_\_\_ charges, and declare that that finding amounts to a finding of guilty on the \_\_\_\_\_ charge, and of not guilty on the \_\_\_\_\_ and \_\_\_\_\_ charges.

I confirm the sentence but mitigate [remit, or commute];

or



[Where the confirming officer desires partly to reserve his con- App. II.  
firmation,]

I confirm the finding of the Court on the \_\_\_\_\_ and  
charges and reserve for confirmation by superior  
authority the finding on the \_\_\_\_\_ and \_\_\_\_\_ charges,  
and the sentence ;

or,

I confirm the findings of the Court, but reserve the sentence  
for confirmation by superior authority ;

or,

I confirm the findings of the Court and the sentence of the Court  
as to \_\_\_\_\_, and reserve the sentence so far as it  
for confirmation by superior authority ;

or,

[Where the finding is not confirmed,]

Not confirmed [the reasons for non-confirmation may be stated].

Signed at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

(Signature of Confirming Authority.)

[Instruction.—Any remarks of the confirming authority should be  
separate from and form no part of the proceedings. The confirming  
authority will in no case comment upon a finding of "not guilty,"  
or upon the inadequacy of a sentence.]

[Where the declaration respecting a special finding on alternative  
charges is added subsequently to the confirmation (Rule 55),]

I declare that the special finding relating to the \_\_\_\_\_ and  
charges amounts to a finding of guilty on the \_\_\_\_\_  
charge, and of not guilty on the \_\_\_\_\_ and  
charges.

Signed at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

(Signature of Authority.)

#### PROMULGATION.

Promulgated and extracts taken at \_\_\_\_\_, this \_\_\_\_\_ day  
of \_\_\_\_\_ 19 .

(Signature of officer in charge of documents.)

#### FORM OF SUMMONS.

*Form of Summons to a Civil Witness.*

A.F.A. 13.

To

Whereas a \_\_\_\_\_ court-martial has been ordered to assemble  
at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19 , for  
the trial of \_\_\_\_\_, of the \_\_\_\_\_ regiment, I do  
hereby summon and require you A. B.  
to attend, as a witness, the sitting of the said Court at  
on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock in  
the forenoon [and to bring with you the documents hereinafter

App. II. mentioned, namely, \_\_\_\_\_, and so to attend from day to day until you shall be duly discharged, whereof you shall fail at your peril.

Given under my hand at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

(Signature)

Convening Officer [or Judge-Advocate or President of the Court or Commanding Officer of the Accused]

## FORM FOR ASSEMBLY AND PROCEEDINGS OF FIELD GENERAL COURT-MARTIAL (a).

### PROCEEDINGS.

\*State the place and country. A. Order convening the court.

\*At \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

#### *Beginning of Form where Troops are not on Active Service.*

Whereas complaint has been made to me, the undersigned, an officer in command of \_\_\_\_\_, in the above-named country, that the persons named in the annexed schedule, being subject to military law, and under my command, have committed the offences in the said schedule mentioned, being offences against the property or person of inhabitants of or residents in the above-mentioned country.

#### *Beginning of Form where Troops are on Active Service.*

Whereas it appears to me, the undersigned, an officer in command of \_\_\_\_\_ on active service, that the persons named in the annexed schedule, and being subject to military law, have committed the offences in the said schedule mentioned.

#### *End of Form applicable to all cases.*

And I am of opinion that it is not practicable that such offences should be tried by an ordinary general court-martial; [†and that it is not practicable to delay the trial for reference to a superior qualified officer].

I hereby convene a field general court-martial to try the said persons, and to consist of

†Omit except where convening officer is not a commanding officer and is below rank of field officer.

#### PRESIDENT.

<i>Rank.</i>	<i>Name.</i>	<i>Regiment.</i>
_____	_____	_____

#### MEMBERS.

<i>Rank.</i>	<i>Name.</i>	<i>Regiment.</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

(a) See Rules 105-123.

[I am of opinion that three officers are not available having due regard to the public service.] App. II.

(Signed)

I certify that the above Court assembled on the \_\_\_\_\_ day of \_\_\_\_\_ and duly tried the persons named in the said schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that schedule.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ .  
C— D—

President of the Court-martial.

I have dealt with the findings and sentences in the manner stated in the last column of the above schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences; [\*and I am of opinion that it is not practicable, having due regard to the public service, to delay the cases for confirmation by any superior qualified authority]

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ .  
E— F—

Field [or General] Officer in the force or commanding ].

I have dealt with the reserved findings and sentences in the manner stated in the last column of the schedule, and, subject to what I have there stated, I hereby confirm the said reserved findings and sentences.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ .  
G— H—  
General [Field] Officer in the force.

Subject to what I have stated in the last column of the schedule, I hereby confirm the [finding and] sentence of death in the case of \_\_\_\_\_ and of penal servitude in the case of \_\_\_\_\_ [†and in the case of the above sentences of death I am of opinion that by reason of \_\_\_\_\_ it is not practicable, having due regard to the public service, to delay the case for confirmation by any qualified officer superior to myself].

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ .  
J— K—  
General [Field] Officer in chief command of the forces.

† Omit except where the court-martial consists of two officers only.  
B. Certificate of president as to proceedings.

O. Confirmation.

\*Omit except where under rules it is ordinarily the duty of the confirming officer to reserve the case

D. Confirmation of reserved sentences.

E. Confirmation of sentence of death or penal servitude.

†Omit where confirmed by officer in chief command.  
J. State, according to the circumstances, the nature of the country, or the great distance, or the operations of the enemy.

## App. II.

## SCHEDULE.

Date 19 . No.

\*If the name of the person charged is unknown, he may be described as unknown, with such addition as will identify him.

†Recommendation to mercy to be inserted in this column.

Name of alleged Offender.*	Offence charged.	Plea.	Finding, and if convicted, sentence.†	How dealt with by confirming officer.
Peter Smith (sutler)	Offence against person of inhabitant of country	Guilty	Guilty. Field punishment No. 1 for .	Confirmed. I remit E—F—
262, Private James Robinson, 1st Batt. —shire Regiment	Breaking into house in search of plunder	Not guilty	Guilty. Imprisonment for .....	Not confirmed. E—F—
564, Private Thomas Jones, 1st Batt. —shire Regiment	Drunk on post	Not guilty	Guilty. Death. Recommended to mercy	Reserved [or Confirmed], but commuted to field punishment No. 1 for E—F— or Confirmed, but commuted to years' penal servitude. J—K—
Person accompanying force (name unknown), white jacket and trousers, scar on right cheek	Impeding provost-marshal	Not guilty	Not guilty	
Soldier in uniform of —shire Regiment (name unknown)	Offence against property of inhabitant of country	Not guilty	Guilty. Field punishment No. 2 for and to forfeit all ordinary pay for a period of	Reserved. E—F— Confirmed. G—H—
P—Q— Convening Officer.		C—D— President.		

## MEMORANDA.

The following Memoranda are intended for the guidance of commanding and convening officers and others in relation to courts-martial with a view to securing uniformity of practice in details not specially dealt with in the Rules of Procedure.

*These Memoranda do not form part of the Appendix to the Rules of Procedure.*

## Commanding Officers.

1. Before applying for the trial of an offender a commanding officer should satisfy himself—

- (a) That the accused is charged with an offence which is an offence against the Army Act;

- (b) That the offender is not exempt from trial under the provisions of A.A. 161 ;
- (c) That the offence is not one of those referred to in K.R. 487 which he can himself dispose of without reference to superior authority, or, if it is one of those offences, that from its gravity or nature or from the previous character of the accused, he ought not to deal with it on account of the inadequacy of his powers of punishment ;
- (d) That the evidence justifies the trial of the offender on the charge ;
- (e) That the charge is properly framed under the appropriate section of the Army, or other, Act ;
- (f) That when once an accused has elected to be tried upon the charge as read out to him from the guard report, it is in no circumstances added to or increased in gravity.

2. When making application for the trial of the offender, the commanding officer should satisfy himself that the following provisions are complied with :—

- (a) The application for trial must be accompanied by all necessary documents ;
- (b) All irrelevant and hearsay statements must be eliminated from the summary of evidence ;
- (c) The name of the officer who it is proposed should act as prosecutor must be stated on the form of application for trial ;
- (d) If the accused has elected to be tried under A.A. 46 (8), the fact must be clearly stated on the form of application for trial ;
- (e) When it is intended to prove any facts in respect of which any deduction from the ordinary pay of the accused can be awarded in consequence of the offence charged, those facts must be clearly shown in the particulars of the charge ;
- (f) In forwarding the names and dates of commissions of officers detailed for court-martial duty, the date of the commission in the territorial force should be given, in the case of an officer qualified by reason of his service in that force, so as to enable the Court to satisfy themselves as provided by R.P. 22 (A) ;
- (g) The charge-sheet should be signed by the officer in actual command of the unit to which the accused belongs ;
- (h) Sufficient space should be left at the foot of the charge-sheet for the orders of the convening officer to be entered. The place and date should be entered by the officer signing the orders (see p. 659).
- (i) The section of the Act under which each charge is framed should be entered in the margin (in red ink), opposite the charge to which it refers ;
- (j) If the accused has elected to be tried instead of submitting to a summary award, it should be so stated (in red ink) at the top of the charge-sheet ;
- (k) When part of the evidence is documentary, the statement of the officer made on producing the documents should be included in the summary ;
- (l) A statement of evidence as to facts should commence by recording the place, date, and time (if material) to which the evidence refers ;

Charge-sheet.

Summary of evidence.

- (m) Where the charge is for deficiency of kit, unless A.F.B. 115 is to be produced in evidence, the fact that the accused has been at some time previously in possession of a complete kit, or of the articles alleged to be deficient; the date and place of discovering any subsequent deficiencies, and that none of the articles have since been recovered, should be included in the summary of evidence. Any articles recovered will, of course, be omitted from the charge.
- (n) A statement that the requirements of R.P. 4 (c, d, e) have been complied with should be entered at the end of the summary of evidence and signed and dated by the officer taking the evidence.

3. After trial has been ordered the commanding officer should satisfy himself as to the following provisions having been complied with :—

- (a) The accused must be warned for trial—in the case of a regimental court-martial not less than 18 hours, and in the case of any other description of court-martial, not less than 24 hours, before the Court assembles ;
- (b) The accused must be informed by an officer of every charge on which he is to be tried, must be given a copy of the charge-sheet and of the summary of evidence, and informed of the rank, name and corps of the officers who are to form the Court as well as of any waiting members ;
- (c) The accused must be informed that on his giving the names of any witnesses for the defence, reasonable steps will be taken to procure their attendance ;
- (d) The accused must be afforded proper opportunity for preparing his defence ;
- (e) No officer of the unit may be detailed as a member of the Court who is ineligible or disqualified to serve under the provisions of R.P. 19 ;
- (f) The accused must be seen by a medical officer on the morning of each day the Court is ordered to sit for his trial.

4. After confirmation the commanding officer must see that the following provisions are complied with :—

- (a) The proceedings must be promulgated as laid down in K.R. 593 ;
- (b) The record of the promulgation must be entered on the proceedings in the form shown on p. 699.
- (c) The proceedings must be returned without delay to the proper authority after promulgation.

#### *Convening Officer.*

5. The convening officer should satisfy himself as regards para. 1 and para. 2 (a) to (e) (above), and in addition he will see :—

- (a) That the court-martial he is about to convene is of the proper description ;
- (b) That the president and prosecutor are named in the garrison or other order directing the Court to assemble ;
- (c) That no officer is detailed to serve on the Court who is ineligible or disqualified under R.P. 19 ;\*

\* For instance, if the accused is charged with embezzling moneys belonging to an officers' mess of a particular unit, he will be careful to see that no officer of that unit is detailed to sit on the court-martial.



- (d) In cases of fraud that the charge-sheet and summary of evidence are, whenever practicable, submitted to the J.A.G. before trial is ordered.
- (e) In the case of general courts-martial at home stations that the charge-sheet, summary of evidence and list showing the rank, name, corps and date of commission of each officer to serve on the Court are submitted to the J.A.G., together with the rank, name and corps of the officer whom he recommends should be appointed to serve as judge advocate at the trial.

If it becomes necessary for a convening officer to avail himself of the services of officers of another command for court-martial duties, the following procedure will be adopted. The convening officer will apply to the command concerned asking for the names of officers to compose the court and these names will be inserted in A.F.A. 47. The command which furnishes the officers should then insert in the command orders an order to the effect that the "undermentioned officers have been placed at the disposal of the Officer Commanding No.                  District [or G.O.C.                  th Brigade] for duty at a court-martial to assemble at [place] on [date.]"

6. Where the convening officer is of opinion:—

- (a) That an officer of the prescribed rank is not available as president ; or
- (b) That, for the trial of an officer, officers of equal or superior rank to the accused are not available ; or
- (c) That it is not practicable to compose a court-martial of officers belonging to different corps ; or
- (d) That it is not practicable to appoint an officer of the special reserve or of the territorial force to serve on a court-martial for the trial of an offender belonging to those branches of the service respectively—

he will record his opinion on the order for the assembly of the Court.

7. Where the convening officer or the senior officer on the spot considers that military exigencies or the necessities of discipline render it impossible or inexpedient to observe any of the Rules of Procedure referred to in R.P. 104, he must make on A.F. A 49 a declaration to that effect, specifying the nature of those exigencies or necessities.

*General.*

8. When several persons are tried successively by the same Court, the time at which each trial commences will be entered on its proceedings as the time at which the trial commences.

9. The full name and description of the accused should be entered on the first page of the proceedings.

10. Every witness, including the officer producing Army Form B 296, must be sworn in the presence of the accused to whom his evidence refers ; he must not be examined on a former oath taken in the presence of another accused person.

11. The prosecutor or other person producing documents must be sworn.

12. When copies of documents are accepted it should be stated in the proceedings that they have been compared with the originals and found correct.

13. A certified true copy on A.F.B. 115 of an entry in A.B. 161

is sufficient evidence of such record, and it is unnecessary for the court to compare A.F.B. 115 with A.B. 161.

14. Articles of equipment, clothing, &c., should be entered throughout the proceedings in the same order as stated in the charge.

15. Where the value of arms, ammunition, equipment, or clothing is proved, or where damage is proved, the accused, if convicted, should be sentenced to be put under stoppages, notwithstanding the fact that he may also be sentenced to be discharged, in case the latter part of the sentence should be remitted.

Forms and documents.

16. Included in Army Form A 9 are two sets of pages "C" and "D"—one for proceedings on the plea of "Not guilty" and one for proceedings on the plea of "Guilty." Where the pleas recorded are all "Not guilty," or all "Guilty," the set pertaining to the plea or pleas recorded, is alone to be used.

When some of the pleas are "Not guilty" and some "Guilty," both sets will be used, the Court proceeding first on the plea or pleas of "Not guilty" up to and including the finding, and then on the plea of "Guilty."

17. The charge-sheet is to be inserted in the proceedings after sheet B; all other documents are to be attached at the end of the proceedings in the order of their production to the Court.

18. Every document attached to the proceedings should be signed by the president and marked with a reference letter, preferably not one used in Army Form A 9.

19. In the case of a plea of "Not guilty" the summary of evidence will be enclosed with the proceedings when sent to the confirming officer; and in cases where there is any material variance between the evidence of any witness in the summary and his evidence at the trial, the summary must be annexed to the proceedings when so sent.

20. All erasures of written or printed matter, and all corrections should be initialed by the president.

21. Pages should be numbered consecutively up to the end of the proceedings, after they have been put together in the order prescribed.

22. Sufficient space should be left below the sentence and signature of the president for the minutes of confirmation and promulgation.

## THIRD APPENDIX.

## FORMS OF COMMITMENT.

## FORM A.

*Form of Order for commitment to Prison of Military Convict sentenced in the United Kingdom to Penal Servitude.* App. III.  
A.F. C 383.

Whereas [*Name—No.—Rank*], of the \_\_\_\_\_ regiment, was by general court-martial held at \_\_\_\_\_, convicted of the offence of \_\_\_\_\_ (a), and, by a sentence signed on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, sentenced (b) to suffer penal servitude, for \_\_\_\_\_ years, commencing on the aforesaid day, and such sentence has been confirmed by \_\_\_\_\_, as required by law.\*

\*Add, if necessary, "with a remission of \_\_\_\_\_ years."

Now, therefore, I, the undersigned, the \_\_\_\_\_ do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict shall be, as soon as practicable, transferred to a prison in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined either permanently or temporarily, there to undergo his sentence according to law.

And I do hereby in pursuance of the above-mentioned Acts and powers order the governor or chief officer of any such prison to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

C.D.

## FORM B.

*Form of Order for commitment to prison of Military Convict sentenced in India, or a Colony, or a Foreign Country, to Penal Servitude.* A.F. C 384.

Whereas [*Name—No.—Rank*], of the \_\_\_\_\_ regiment, was by a general court-martial held at \_\_\_\_\_, convicted of the offence of \_\_\_\_\_ (a), and by a sentence signed on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, sentenced (b) to suffer penal servitude for \_\_\_\_\_ years, commencing on the aforesaid day, and such sentence has been confirmed by \_\_\_\_\_, as required by law.\*

\*Add, if necessary, "with a remission of \_\_\_\_\_ years."

(a) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the convict was convicted, but if modified by the finding, as so modified; omitting the statement of particulars giving the details of time, place, and circumstances.

(b) Where the sentence was death, but has been commuted to penal servitude, substitute "to suffer death, and such sentence was confirmed by \_\_\_\_\_, as required by law, and was commuted to \_\_\_\_\_ years' penal servitude, commencing on the aforesaid day."

(M.L.)

2 T 2

App. III. Now, therefore, I, the undersigned, the \_\_\_\_\_ do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict shall be, as soon as practicable, transferred to a prison in the United Kingdom in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily, there to undergo his sentence according to law.

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the governor or chief officer of any such prison as aforesaid to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

And for the above purpose, I, the undersigned, do hereby further, in pursuance of the above-mentioned Acts and powers, order that the said convict be removed in military custody by [*here state route*], or such other route as may be directed by proper authority, to the port at \_\_\_\_\_ or such other port as may be directed by proper authority, thence to be removed by [*here state route*] to such prison as aforesaid in the United Kingdom.

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the officer or non-commissioned officer in charge of any detention barrack, and also the governor or chief officer of any prison, military or civil, to whom the convict is brought, to receive the said convict, and detain him so long as appears reasonably necessary with the view to his said removal, and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 . . . C.D.

*In case an Alteration of the Route above mentioned becomes necessary. (a)*

Whereas for the purpose of better carrying into effect the above order for the removal of the above-mentioned convict to the United Kingdom, it is necessary to alter the route above-mentioned, I, the undersigned, the \_\_\_\_\_, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict be removed in military custody by [*here state the route so far as varied*] to \_\_\_\_\_, thence to be removed as directed by the said order.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 . . . E.F.

*In case of need the following Order may be made.*

For the purpose of carrying into effect the above order, I, the undersigned, being the \_\_\_\_\_, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the governor or chief officer of \_\_\_\_\_ prison or detention barrack at \_\_\_\_\_, to receive the above-named convict, and to detain him until he can be removed to \_\_\_\_\_ and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 . . . G.H.

(a) This order can be repeated by any removing authority as often as necessary.

## FORM C.

App. III.

*Form of Order for Commitment to Prison, Military or Civil (or to a detention barrack), of persons subject to military law sentenced either in or out of the United Kingdom to Imprisonment.*

A.F. C 385

To the governor or chief officer in charge of (a) prison (or detention barrack) at

Whereas [*Name—No.—Rank*], of the \_\_\_\_\_ regiment, was by a (b) court-martial held at \_\_\_\_\_ convicted of the offence of (c) \_\_\_\_\_, and by a sentence signed on the \_\_\_\_\_ day of 19 \_\_\_\_\_, sentenced (d) to be imprisoned with \_\_\_\_\_ \*hard labour for \_\_\_\_\_, commencing on the aforesaid day, and such sentence has been confirmed by \_\_\_\_\_, as required by law (e).

\*If the sentence does not specify hard labour alter "with" into "without."

Now, therefore, I, the undersigned, the

do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive the said person into your custody and detain him to undergo his said sentence according to law, and for so doing this shall be your warrant.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

G.H.

## FORM D.

*Form of Order for commitment to a detention barrack of persons subject to military law as soldiers, sentenced either in or out of the United Kingdom to Detention.*

A.F. C 385A.

To the commandant or chief officer in charge of the detention barrack at

Whereas [*Name—No.—Rank*], of the \_\_\_\_\_ regiment, was by a (f) court-martial held at \_\_\_\_\_ convicted of the offence of (c) \_\_\_\_\_ and, by a sentence signed on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, sentenced (g) to detention for \_\_\_\_\_

(a) Insert "His Majesty's," or as required according to title of prison.

(b) Insert "general" or "district" as required.

(c) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.

(d) Substitute, where the original sentence was death or penal servitude which has been commuted to imprisonment, "to suffer death, and such sentence has been confirmed by \_\_\_\_\_ as required by law, but has been commuted into imprisonment for \_\_\_\_\_, with \_\_\_\_\_ \*hard labour, commencing on the aforesaid day," or "to suffer \_\_\_\_\_ years' penal servitude, and such sentence has been confirmed by \_\_\_\_\_ as required by law, and has been commuted into imprisonment for \_\_\_\_\_, with \_\_\_\_\_ \*hard labour, commencing on the aforesaid day."

(e) Add, if necessary, "with a remission of \_\_\_\_\_," or "but has been mitigated by the omission of the hard labour," or as the case may be.

(f) Insert "general," "district," or "regimental," as required.

(g) Substitute, where the original sentence was death, penal servitude, or imprisonment, which has been commuted to detention, "to suffer death, and such sentence has been confirmed by \_\_\_\_\_ as required by law, but has been commuted into detention for \_\_\_\_\_ commencing on the aforesaid day," or "to suffer \_\_\_\_\_ years' penal servitude, and such sentence has been confirmed by \_\_\_\_\_ as required by law, and has been commuted into detention for \_\_\_\_\_ commencing on the aforesaid day," or "to be imprisoned with (or without) hard labour for \_\_\_\_\_ commencing on the aforesaid day, and such sentence has been commuted into detention for \_\_\_\_\_ commencing on the aforesaid day."

\*If the commutation does not specify hard labour alter "with" into "without".

## App. III.

commencing on the aforesaid day, and such sentence has been confirmed by \_\_\_\_\_ as required by law (a).

Now, therefore, I, the undersigned, being the do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive the said soldier into your custody and detain him to undergo his said sentence according to law, and for so doing this shall be your warrant.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ G.H.

## FORM E.

A.F. C 386. *Form of Order respecting Imprisonment under Sentence passed out of the United Kingdom and to be undergone in the United Kingdom.*

Whereas [Name—No.—Rank], of the \_\_\_\_\_ regiment, was by a (b) \_\_\_\_\_ court-martial held at \_\_\_\_\_ convicted of the offence of \_\_\_\_\_ (c), and by a sentence signed on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, sentenced (d) to be imprisoned with \_\_\_\_\_ \*hard labour for \_\_\_\_\_, commencing on the aforesaid day, and such sentence has been confirmed by \_\_\_\_\_, as required by law (e).

\*If the sentence does not specify hard labour, alter "with" into "without."

Now, therefore, I, the undersigned, the

being the committing and removing authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said soldier shall be transferred and removed to \_\_\_\_\_ prison (or detention barrack) at \_\_\_\_\_ in the United Kingdom, or such other public prison or detention barrack in the United Kingdom as any other competent authority may appoint in this behalf, there to undergo his sentence according to law.

And I do hereby, in pursuance of the said Acts and powers, order the governor or chief officer of any such prison or detention barrack as aforesaid to whom the above soldier is brought, to receive the soldier into his custody and detain him accordingly and for so doing this shall be sufficient warrant.

And I do hereby, in pursuance of the said Acts and powers, further order that the said soldier shall be conveyed in military custody and detained in military custody or in a prison, military

(a) Add, if necessary, "with a remission of \_\_\_\_\_."

(b) Insert "general," or "district," as required.

(c) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.

(d) Substitute, where the original sentence was death or penal servitude which has been commuted to imprisonment, "to suffer death, and such sentence has been confirmed by \_\_\_\_\_ as required by law, but has been commuted into \_\_\_\_\_, with \_\_\_\_\_ \*hard labour, commencing on the aforesaid day."

\*If the commutation does not specify hard labour alter "with" into "without."

imprisonment for said day," or "to suffer \_\_\_\_\_ years' penal servitude, and such sentence has been confirmed by \_\_\_\_\_ as required by law, and has been commuted into \_\_\_\_\_, with \_\_\_\_\_ \*hard labour, commencing on the aforesaid day."

(e) Add, if necessary, "with a remission of \_\_\_\_\_," or "but has been mitigated by the omission of the hard labour," or as the case may be.



or civil, or a detention barrack, so far as appears necessary or proper for effecting his removal to the said prison or detention barrack in the United Kingdom. App III.

Signed at                      this                      day of                      19 .

H.I.

*In case of a Committal to any intermediate Prison or Detention Barrack being necessary (a).*

For the purpose of carrying into effect the above Order, I, the undersigned, the  
do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the governor or chief officer of the                      prison or detention barrack at                      , to receive the said soldier and detain him until he can be removed, in pursuance of the above order, and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at                      this                      day of                      19 .

I.K.

*Order on arrival in United Kingdom of soldier sentenced to imprisonment.*

I, the undersigned, the                      being the committing and removing authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order him to be transferred and removed to the                      prison or detention barrack at                      , to undergo his sentence according to law.

And I do hereby order the governor or chief officer of that prison or detention barrack to receive him, and for so doing this shall be sufficient warrant.

Signed at                      this                      day of                      19 .

K.L.

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(a) This order may be repeated as often as necessary by any authority having power to make it.

## App. III.

## FORM F.

**A.F. O 386A.** *Form of Order respecting detention under Sentence passed out of the United Kingdom and to be undergone in the United Kingdom.*

Whereas [*Name—No.—Rank*], of the \_\_\_\_\_ regiment was by a (*a*) \_\_\_\_\_ court-martial held at \_\_\_\_\_ convicted of the offence of (*b*) \_\_\_\_\_ and by a sentence signed on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, sentenced (*c*) to detention for \_\_\_\_\_, commencing on the aforesaid day, and such sentence has been confirmed by \_\_\_\_\_ required by law (*d*).

Now, therefore, I, the undersigned, the

being the committing and removing authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said soldier shall be transferred and removed to \_\_\_\_\_ detention barrack at \_\_\_\_\_ in the United Kingdom or such other detention barrack in the United Kingdom as any other competent authority may appoint in this behalf, there to undergo his sentence according to law.

And I do hereby, in pursuance of the said Acts and powers, order the commandant or chief officer of any such detention barrack as aforesaid to whom the above soldier is brought to receive the soldier into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

And I do hereby, in pursuance of the said Acts and powers further order that the said soldier shall be conveyed in military custody and detained in military custody or in a detention barrack so far as appears necessary or proper for effecting his removal to the said detention barrack in the United Kingdom.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

*E.F.*

(*a*) Insert "general," "district," or "regimental," as required.

(*b*) If there are several offences state all of them. An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.

(*c*) Substitute, where the original sentence was death, penal servitude, or imprisonment which has been commuted to detention, "to suffer death, and such sentence has been confirmed by \_\_\_\_\_ as required by law, but has been commuted into detention for \_\_\_\_\_, commencing on the aforesaid day," or "to suffer \_\_\_\_\_ years' penal servitude, and such sentence has been confirmed by \_\_\_\_\_ as required by law, and has been commuted into detention, for \_\_\_\_\_, commencing on the aforesaid day" or "to be imprisoned with (or without) hard labour for \_\_\_\_\_ commencing on the aforesaid day, and such sentence has been confirmed by \_\_\_\_\_ as required by law, and has been commuted into detention for \_\_\_\_\_ commencing on the aforesaid day."

(*d*) Add, if necessary, "with a remission of \_\_\_\_\_."

If the detention was awarded by the commanding officer, the form from Whereas "down to "required by law" will be replaced by the corresponding provision in Form "G."

*In case of a Commitment to any intermediate Detention Barrack  
being necessary (a).*

App. III.

For the purpose of carrying into effect the above Order, I, the undersigned, the

do hereby, in pursuance of the Army Act and of all other Acts and powers enabling me in this behalf, order the commandant or chief officer of the detention barrack at , to receive the said soldier, and detain him until he can be removed, in pursuance of the above Order, and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at this day of 19 .

D.E.

*Order on Arrival of Soldier in United Kingdom.*

I, the undersigned, the

being the committing and removing authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the said soldier to be transferred and removed to the detention barrack at to undergo his sentence according to law.

And I do hereby order the commandant or chief officer of that detention barrack to receive him, and for so doing this shall be sufficient warrant.

Signed at this day of 19 .

D.E.

## FORM G.

*Form of Commitment to Detention Barrack on award of Detention  
by Commanding Officer.* A.F.C 388.

To the commandant or officer or non-commissioned officer in charge of the detention barrack at

Whereas [*Name—No.—Rank*], of the regiment, was on the day of 19 , awarded by his commanding officer detention for the offence of

Now, therefore, I, the undersigned, being the commanding officer of the said soldier, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive him into your custody to undergo his sentence according to law, and for so doing this shall be your warrant.

Signed at this day of 19 .

D.E.

(a) This order may be repeated as often as necessary by any authority having power to make it.

## App. III.

## FORM H.

A.F. C 389. *Order for Discharge of Persons subject to Military Law undergoing Imprisonment.*

To the governor, commandant, or chief officer of                      prison  
or detention barrack at

Whereas [*Name—No.—Rank*], of the                      regiment, is now  
in your custody under a sentence of imprisonment by court-  
martial.

I, the undersigned, being                      do hereby order  
you to discharge the said soldier.

Signed at                      this                      day of                      19   .

*E.F.*

## FORM I.

A.F. C 389A. *Order for Discharge of Persons subject to Military Law as Soldiers undergoing Detention.*

To the commandant or chief officer of the  
detention barrack at

Whereas [*Name—No.—Rank*], of the                      regiment,  
is now in your custody under a sentence of detention by court-  
martial.

I, the undersigned, being                      do hereby order you to  
discharge the said soldier.

Signed at                      this                      day of                      19   .

*E.F.*

## FORM J.

A.F. C 390. *Form of Discharging Order in case of Detention under the Award of Commanding Officer.*

To the commandant or officer or non-commissioned officer in  
charge of the detention barrack at

You are hereby required to discharge the soldier [*Name—  
No.—Rank*], of the                      regiment, now in your  
custody undergoing his sentence pursuant to the award of his com-  
manding officer.

Signed at                      this                      day of                      19   .

*C.D.*

Commanding Officer of the above Soldier.

## FORM K.

App. III.

*Order for Removal of Soldier undergoing Imprisonment to be brought before a Court.* A.F. O 391.

To the governor or chief officer of \_\_\_\_\_ prison  
or detention barrack at \_\_\_\_\_

Whereas [*Name—No.—Rank*], of the \_\_\_\_\_ regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial.

I, the undersigned, being \_\_\_\_\_ do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer bringing this order.

And I do hereby order the said officer or non-commissioned officer, and all other officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and bring him to there to appear before a (a) court-martial (b) as a witness, and then to return him to the above-named prison (or detention barrack), or to such other prison (or detention barrack) as may be determined by the proper authority, and to detain him in military custody until he is so returned or is discharged in due course of law, and for so doing this shall be sufficient warrant.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

C.D.

*If the Prison (or Detention Barrack) to which he is returned is altered.*

I, the undersigned, being the \_\_\_\_\_ do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that he be forthwith returned in military custody to \_\_\_\_\_ prison (or detention barrack) at \_\_\_\_\_ there to undergo the remainder of his sentence.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

C.D.

## FORM L.

*Order for Removal of Soldier undergoing detention to be brought before a Court.* A.F. O 391A.

To the commandant or chief officer of the detention barrack at \_\_\_\_\_

Whereas [*Name—No.—Rank*], of the \_\_\_\_\_ regiment, is now in your custody, undergoing a sentence of detention \_\_\_\_\_

(a) If the facts so require, substitute "civil court."

(b) Substitute, according to the facts, "for trial," or state the other reasons for which he is to be brought.

App. III. passed by court-martial (a) ;

I, the undersigned, being the \_\_\_\_\_, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer bringing this order.

And I do hereby order the said officer or non-commissioned officer, and all other officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and bring him to \_\_\_\_\_, there to appear before a (b) court-martial (c) as a witness, and then to return him to the above-named detention barrack, or to such other detention barrack as may be determined by the proper authority, and to detain him in military custody until he is so returned, or is discharged in due course of law, and for so doing this shall be sufficient warrant.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

C.D.

*If the Detention Barrack to which he is returned is altered.*

I, the undersigned, being the \_\_\_\_\_ do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that he be forthwith returned in military custody to the detention barrack at \_\_\_\_\_, there to undergo the remainder of his sentence.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

C.D.

### FORM M.

A.F. C 392.

#### *Order for Removal of Soldier undergoing Imprisonment for Embarkation.*

To the governor or chief officer of \_\_\_\_\_ prison  
(or detention barrack) at \_\_\_\_\_

Whereas [Name—No.—Rank], of the \_\_\_\_\_ regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial.

I, the undersigned, being the \_\_\_\_\_, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said

(a) If necessary, substitute "awarded by his commanding officer."

(b) If the facts so require, substitute "civil court."

(c) Substitute, according to the facts, "for trial," or state the other reasons for which he is to be brought.



soldier in military custody and to convey him in military custody in such manner as may be directed by military authority to where the regiment to which he belongs is serving (a), and for so doing this shall be sufficient warrant. App. III.

Signed at this day of 19 . J.K.

## FORM N.

*Order for Removal of Soldier undergoing Detention for Embarkation.* A.F. C 392A.

To the commandant or chief officer of the detention barrack at

Whereas [*Name—No.—Rank*], of the regiment, is now in your custody undergoing a sentence of detention passed by court-martial (b).

I, the undersigned, being the

do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and to convey him in military custody in such manner as may be directed by military authority to where the regiment to which he belongs is serving (a), and for so doing this shall be sufficient warrant.

Signed at this day of 19 . J.K.

## FORM O.

*Order for Removal of Soldier from one public Prison (or Detention Barrack) to another.* A.F. C 393.

To the governor or chief officer of prison (or detention barrack) at

Whereas [*Name—No.—Rank*], of the regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial.

I, the undersigned, being the do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose

(a) If necessary, substitute "under orders to serve."

(b) If necessary, substitute "awarded by his commanding officer."

App. III. custody the said soldier may be delivered, to keep the said soldier in military custody and convey him in military custody in such manner as may be directed by military authority, to the \_\_\_\_\_ prison (or detention barrack) at \_\_\_\_\_, there to undergo the remainder of his sentence, and for so doing this shall be sufficient warrant.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

*D.E.*

#### FORM P.

A.F. C 393A. *Order for Removal of a person subject to Military Law as a Soldier undergoing Detention from one Detention Barrack to another.*

To the commandant or chief officer of the detention barrack at \_\_\_\_\_

Whereas [*Name—No.—Rank*], of the \_\_\_\_\_ regiment, is now in your custody undergoing a sentence of detention passed by court-martial (a);

I, the undersigned, being the \_\_\_\_\_, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody, and convey him in military custody in such manner as may be directed by military authority, to the detention barrack at \_\_\_\_\_, there to undergo the remainder of his sentence, and for so doing this shall be sufficient warrant.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

*D.E.*

#### FORM Q (b).

A.F. C 396. *Form of order for temporary custody in Prison or Lock-up.*

To the governor or chief officer of \_\_\_\_\_ prison at \_\_\_\_\_ (c).

Whereas [*Name—No.—Rank*], of the \_\_\_\_\_ regiment, is now a soldier in military custody.

Now therefore I, the undersigned, the commanding officer of the said soldier, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive the said soldier into your custody and detain him until you receive a further order from me, but not longer than seven days, and for so doing this shall be your warrant.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

*J.E.*

(a) If necessary, substitute "awarded by his commanding officer."

(b) This form can be used only in the case of a soldier as defined by the Army Act.

(c) Substitute, if necessary, "officer in charge of the police station [or other place] at \_\_\_\_\_."

## FORM R.

App. III.

*Form of Commitment to Detention Barrack for safe custody while awaiting Trial by, or Sentence of, Court-Martial.* A.F. B 72.

To the officer or non-commissioned officer in charge of the detention barrack at

Whereas [*Name—No.—Rank*], of the \_\_\_\_\_ regiment  
[has been remanded for trial by court-martial] (a) or [was on the  
day of \_\_\_\_\_ 19 \_\_\_\_\_, tried by court-martial for the  
offence of \_\_\_\_\_],  
and is awaiting [trial] (a) or [the promulgation of the finding  
and sentence of the court].

Now, therefore, I, the undersigned, being the commanding officer of the said soldier, do hereby, in pursuance of the King's Regulations and Orders for the Army enabling me in this behalf, order you to receive him into your custody for safe custody, and for so doing this shall be your warrant.

You will take care that the said soldier wears his regimental clothing and necessaries, that he is allowed to exercise during a reasonable portion of each day in association, if possible, but that he is kept apart from soldiers undergoing sentences, and that he receives the ordinary rations and messing of a soldier. He should not be *obliged* to labour otherwise than by being employed in drill fatigue and other duties similar in kind and amount to those he might be called on to perform if not in confinement.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

(Signature)

## FORM S.

*Form of Discharging Order in case of Confinement in Detention Barrack for safe Custody while awaiting Trial by, or Sentence of, Court-Martial.* A.F. B 91.

To the officer or non-commissioned officer in charge of the detention barrack at

You are hereby required to deliver over the soldier [*Name—No.—Rank*], of the \_\_\_\_\_ regiment, now in your custody for safe custody, pursuant to committal by his commanding officer, to the non-commissioned officer of the escort herewith attending to receive him.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

(Signature)

Commanding Officer of the above Soldier.

(a) NOTE.—The forms should be altered to meet cases of confinement before and after the trial respectively by erasing the words not applicable.

App. III.

## FORM T.

A.F.  
O 1797.*Order for the Removal in Military Custody of a Deserter or Absentee  
without leave awaiting Escort.*

To the governor or chief officer of \_\_\_\_\_ prison.

Whereas [*Name—No.—Rank*], of the \_\_\_\_\_ regiment,  
is now in your custody as a deserter or absentee without leave  
awaiting escort, I, the undersigned, being  
do hereby order you to deliver the said prisoner to  
the escort producing this authority.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

D.E.

## FORM U.

*Form of Commitment of Person guilty of Contempt of a  
Court-Martial under s. 28.*

To the officer or non-commissioned officer in charge of the  
prison [*or detention barrack*] at \_\_\_\_\_

Whereas a court-martial for the trial of \_\_\_\_\_, of which I,  
the undersigned, am president, was on this day sitting at  
\_\_\_\_\_ and \_\_\_\_\_ of the \_\_\_\_\_

Battalion, \_\_\_\_\_ Regiment, was guilty of contempt of  
the court by using insulting language [*or by using threatening  
language*], [*or by causing an interruption in the proceedings of such  
court, or as the case may be*], namely by [*here describe the act of  
which the offender was guilty*].

And whereas the said court did order the above-named offender  
to be imprisoned [*or to undergo detention*] for \_\_\_\_\_ days.

Now, therefore, the court doth order you to receive the said  
offender into your custody for safe custody, and for so doing this  
shall be your warrant.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

(Signature)

A.B., President of the above  
Court-Martial.

# Army Act, 1955

3 & 4 ELIZ. 2 CH. 18

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## ARRANGEMENT OF SECTIONS

### PART I

#### ENLISTMENT AND TERMS OF SERVICE

##### *Enlistment*

###### Section

1. Recruiting officers.
2. Enlistment.

##### *Appointment to corps and transfer from one corps to another*

3. Enlistment for general or corps service and appointment to and transfer between corps.

##### *Terms and conditions of service*

4. Terms of enlistment.
5. Change of conditions of service after enlistment for term of twenty-two years.
6. Conversion of shorter term into term of twenty-two years.
7. Other changes of conditions of service of persons enlisted for less than twenty-two years.

##### *Extension of service*

8. Continuance in service after twenty-two years' service.
9. Postponement in certain cases of discharge or transfer to the reserve.
10. Continuation of army service in imminent national danger.

##### *Discharge and transfer to reserve*

11. Discharge.
12. Transfer to the reserve.
13. Postponement of discharge or transfer pending proceedings for offences.
14. Right of recruit to purchase discharge.
15. Right of warrant officer to discharge on reduction to ranks.
16. Discharge of soldiers of unsound mind.

*Miscellaneous and supplementary provisions*

## Section

17. Forfeiture of service for desertion and restoration of forfeited service.
18. Validity of attestation and enlistment.
19. False answers in attestation paper.
20. Special provisions as to National Service men.
21. Service of aliens in regular forces.
22. Regulations as to enlistment.
23. Interpretation.

## PART II

DISCIPLINE AND TRIAL AND PUNISHMENT OF  
MILITARY OFFENCES*Treachery, cowardice and offences arising out of  
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25. Communication with the enemy.
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27. Offences against morale.
28. Becoming prisoner of war through disobedience or wilful neglect; and failure to rejoin forces.
29. Offences by or in relation to sentries, etc.
30. Looting.

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31. Mutiny.
32. Failure to suppress mutiny.
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34. Disobedience to particular orders.
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37. Desertion.
38. Absence without leave.
39. Assisting and concealing desertion and absence without leave.
40. Falsely obtaining or prolonging leave.
41. Failure to perform military duties.

*Malingering and drunkenness*

42. Malingering.
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*Offences relating to property*

## Section

- 44. Offences in relation to public and service property.
- 45. Offences in relation to property of members of forces.
- 46. Miscellaneous offences relating to property.

*Offences relating to Billeting and Requisitioning of Vehicles*

- 47. Billeting offences.
- 48. Offences in relation to requisitioning of vehicles.

*Flying, etc., offences*

- 49. Dangerous flying, etc.
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*Offences relating to, and by, persons in custody*

- 53. Irregular arrest and confinement.
- 54. Permitting escape, and unlawful release of prisoners.
- 55. Resistance to arrest.
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*Offences in relation to courts-martial and civil authorities*

- 57. Offences in relation to courts-martial.
- 58. False evidence.
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- 62. Making of false documents.
- 63. Offences against civilian population.
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- 65. Ill-treatment of officers or men of inferior rank.
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- 67. False accusation, etc.
- 68. Attempts to commit military offences.
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- 70. Civil offences.

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- 72. Punishment of other ranks.
- 73. Field punishment.

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- 74. Power to arrest offenders.
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## Section

76. Investigation of charges by commanding officer.
77. Charges to be dealt with summarily or by court-martial.
78. Further proceedings on charges against N.C.O.s and soldiers.
79. Further proceedings on charges against officers and warrant officers.
80. Dismissal of charges referred to higher authority.
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85. Powers of different descriptions of court-martial.
86. Officers having power to convene courts-martial.
87. Constitution of general courts-martial.
88. Constitution of district courts-martial.
89. Constitution of field general courts-martial.
90. Supplementary provisions as to constitution of courts-martial.
91. Place for sitting of courts-martial and adjournment to other places.

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93. Administration of oaths.
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## CHAPTER 18

An Act to make provision with respect to the army.  
[6th May, 1955]

**B**E it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### ENLISTMENT AND TERMS OF SERVICE

##### *Enlistment*

1. The following persons may enlist recruits in the regular Recruiting forces and are in this Act referred to as recruiting officers, that officers. is to say,—

- (a) whether within or without Her Majesty's dominions, any officer authorised under regulations of the Army Council,
- (b) in a colony, any person authorised by the Governor of the colony,
- (c) outside Her Majesty's dominions, any British consul-general, consul or vice-consul, and any person duly exercising the authority of a British consul.

2.—(1) A person offering to enlist in the regular forces shall Enlistment. be given a notice in the prescribed form setting out the questions to be answered on attestation and stating the general conditions

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—cont.

of the engagement to be entered into by him; and a recruiting officer shall not enlist any person in the regular forces unless satisfied by that person that he has been given such a notice, understands it and wishes to be enlisted.

(2) The procedure for enlisting a person in the regular forces shall be that set out in the First Schedule to this Act.

(3) A recruiting officer shall not enlist a person under the minimum age for man's service unless consent to the enlistment has been given in writing—

- (a) if the person offering to enlist is living with both or one of his parents, by the parents or parent;
- (b) if he is not living with both or one of his parents, but any person (whether a parent or not) whose whereabouts are known or can after reasonable enquiry be ascertained has parental rights and powers in respect of him, by that person;
- (c) if there is no such person as is mentioned in paragraph (b) of this subsection or if after reasonable enquiry it cannot be ascertained whether there is any such person, by any person in whose care (whether in law or in fact) the person offering to enlist may be.

(4) Where the recruiting officer is satisfied, by the production of a certified copy of an entry in the register of births or by any other evidence appearing to him to be sufficient, that a person offering to enlist has or has not attained the minimum age for man's service, that person shall be deemed for the purposes of this Act to have attained, or as the case may be, not to have attained, that age.

A document purporting to be a certificate signed by the recruiting officer, stating that he is satisfied as aforesaid, shall be sufficient evidence, until the contrary is proved, that he is so satisfied.

(5) In this Part of this Act the expression "minimum age for man's service" means the age of seventeen years and six months, except that in such classes of case as may be prescribed it means the age of seventeen years.

*Appointment to corps and transfer from one corps to another*

Enlistment  
for general or  
corps service  
and  
appointment  
to and transfer  
between corps.

3.—(1) Recruits may, in pursuance of regulations of the Army Council under this Part of this Act, be enlisted for service in particular corps, but save as may be provided by such regulations recruits shall be enlisted for general service.

(2) The competent military authority shall as soon as practicable appoint a recruit, if enlisted for service in a corps, to that corps, and if enlisted for general service, to such corps as the competent military authority may think fit:

Provided that a recruit enlisted for general service before attaining the age of eighteen years need not be appointed to a corps until he attains that age.

(3) A soldier of the regular forces may at any time be transferred by order of the competent military authority from one corps to another:

Provided that except while a state of war exists between Her Majesty and any foreign power, or men of the reserve are called out on permanent service, an order under this subsection shall not be made otherwise than by a member of the Army Council unless the person to whom the order relates consents to the transfer.

(4) Where, in pursuance of the last foregoing subsection, a soldier of the regular forces is transferred to a corps in an arm or branch of the service different from that in which he was previously serving, the competent military authority may by order vary the conditions of his service so as to correspond with the general conditions of service in the arm or branch to which he is transferred.

#### *Terms and conditions of service*

4.—(1) The term for which a person enlisting in the regular forces may be enlisted shall be such a term, beginning with the date of his attestation, as is mentioned in the following provisions of this section. Terms of enlistment.

(2) Where the person enlisting has attained the minimum age for man's service the said term shall be—

- (a) a term of twenty-two years of army service; or
- (b) such term, not exceeding twelve years, as may be prescribed, being a term of army service; or
- (c) such term, not exceeding twelve years, as may be prescribed, being as to such part thereof as may be prescribed a term of army service and as to the remainder a term of service in the reserve.

(3) Where the said person has not attained the minimum age for man's service the said term shall be—

- (a) a term ending with the expiration of such period, not exceeding twelve years, beginning with the date on which he attains the age of eighteen years, as may be prescribed, being a term of army service; or

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—cont.

- (b) a term ending with the expiration of such period as aforesaid, being as to such part thereof as may be prescribed a term of army service and as to the remainder a term of service in the reserve.

Change of  
conditions of  
service after  
enlistment for  
term of  
twenty-two  
years.

5.—(1) A person in army service who enlisted for a term of twenty-two years of such service shall have the right, exercisable as mentioned in subsection (5) of this section,—

- (a) to be transferred to the reserve at the end of the period of three or at the end of the period of six years beginning with the date of his attestation ; or
- (b) to determine his service at the end of the period of nine years beginning with the date of his attestation or of any succeeding period of three years.

(2) A person in army service who enlisted as aforesaid may, on written application in that behalf made by him to the competent military authority and with the consent of that authority, be transferred to the reserve at any time before he has completed nine years' service.

(3) Where a person is transferred to the reserve under subsection (1) or subsection (2) of this section then (subject to the next following subsection)—

- (a) if he is so transferred before completing six years' army service he shall serve in the reserve for a period of four years :
- (b) if he is so transferred after completing six years' army service he shall serve in the reserve for a period of three years.

(4) A person in the reserve by virtue of subsection (1) or subsection (2) of this section may, on written application in that behalf made by him to the competent military authority and with the consent of that authority, at any time re-enter upon army service and, according as may be specified in the application, either—

- (a) be treated for the purposes of this Part of this Act in all respects as if that service had continued while he was in the reserve as aforesaid ; or
- (b) serve in army service for the remainder of the period for which he would have been liable to serve in the reserve if he had not re-entered upon army service ; or
- (c) serve in army service for a specified part of that remainder and thereafter serve in the reserve for the residue thereof.

(5) Subject to the next following subsection the right conferred by subsection (1) of this section shall be exercisable by notice in writing in the prescribed form given by the person in question to his commanding officer not less than six nor more than twelve months before the expiration of the period at the end of which he is to be transferred to the reserve or, as the case may be, his service is to determine.

(6) Where a person, in consideration of his being permitted to undergo a prescribed course of instruction or a course of instruction of a prescribed class, or of the conferring on him of such other benefit or advantage as may be prescribed, has undertaken, in the prescribed form and manner, not to determine his army service before the expiration of such period beginning with the day on which that course of instruction ends as may be prescribed or, as the case may be, before the expiration of such period as may be prescribed in relation to that other benefit or advantage, he shall not give a notice under the last foregoing subsection which would result in his transfer to the reserve or the determination of his service before the end of that period.

(7) A notice given by a person under subsection (5) of this section may be withdrawn by a notice in writing in the prescribed form given by him to his commanding officer at any time before the expiration of the period mentioned in that subsection, but where a notice under this subsection is given in the last six months of that period it shall be of no effect unless approved by the competent military authority.

6.—(1) A person in army service who enlisted after attaining the minimum age for man's service and whose enlistment was not for a term of twenty-two years may, on giving to his commanding officer written notice in the prescribed form and with the consent of the competent military authority, be treated for the purposes of this Act as if his enlistment had been for a term of twenty-two years of army service. Conversion of shorter term into term of twenty-two years.

(2) A person in army service who enlisted before attaining the minimum age for man's service may, on giving to his commanding officer a notice in the prescribed form and with the consent of the competent military authority, be treated for the purposes of this Act at any time after attaining the age of eighteen years as if on the day on which he attained that age he had enlisted for a term of twenty-two years of army service.

A person shall not give a notice under this subsection before attaining the age of seventeen years and six months.

(3) A person who by virtue of this section is treated as if he had been enlisted for a term of twenty-two years of army service shall not exercise his right under subsection (1) of the last foregoing section so as to reduce his army service to less than it would have been if he had not been treated as aforesaid.



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—cont.

Other changes  
of conditions  
of service of  
persons  
enlisted for  
less than  
twenty-two  
years.

7.—(1) Where a person in army service enlisted otherwise than for a term of twenty-two years of such service his conditions of service may, on written application in that behalf made by him to the competent military authority and with the consent of that authority, be changed as follows, that is to say:—

- (a) if his enlistment was for a term ending before the expiration of a period of twelve years beginning with the date of his attestation or (if he enlisted before attaining the minimum age for man's service) the date of his attaining the age of eighteen years, that term may be extended so as to end at such time, not later than the expiration of the said period, as may be specified in the application and so as to increase the period of his army service, his service in the reserve, or both, as may be so specified;
- (b) if the term for which he enlisted, or that term as extended under paragraph (a) of this subsection, includes a period of service in the reserve, his period of army service may be increased, according as may be specified in the application, so as to extend to the whole or a specified part of that period;
- (c) he may be transferred to the reserve to serve therein for the residue of the term for which he was enlisted, or if that term has been extended under paragraph (a) of this subsection, for the residue of that term as so extended.

(2) A person in the reserve by virtue either of the terms of his enlistment or of subsection (1) of this section may, on written application in that behalf made by him to the competent military authority and with the consent of that authority, at any time re-enter upon army service and, according as may be specified in the application, either—

- (a) serve in army service for the remainder of the period for which he would have been liable to serve in the reserve if he had not re-entered upon army service, or
- (b) serve in army service for a specified part of that remainder and thereafter serve in the reserve for the residue thereof.

*Extension of service*

Continuance in  
service after  
twenty-two  
years' service.

8.—(1) A soldier of the regular forces enlisted for a term of twenty-two years of army service who has completed the prescribed period (which shall not be less than fifteen years) of continuous service from the date of his attestation may give notice to his commanding officer of his desire to continue in army service, after the completion of twenty-two years' service, for such period, not exceeding five years, as may be specified in

the notice; and, if the competent military authority approve he may, after the completion of twenty-two years' service, be continued as a soldier of the regular forces for the period specified in the notice, in all respects as if his term of service were still unexpired.

The giving, under the foregoing provisions of this subsection, of a notice by a soldier shall not prejudice the exercise by him of the right conferred by subsection (1) of section five of this Act.

(2) Where a soldier of the regular forces will, at the end of the term for which he was enlisted, have completed not less than twenty-two years' service but will not be entitled to give a notice under the last foregoing subsection, he may, at any time during the last twelve months of that term, give notice to his commanding officer of his desire to continue in army service, after the end of that term, for such period, not exceeding five years, as may be specified in the notice; and, if the competent military authority approve, he may, after the end of that term, be continued as a soldier of the regular forces, for the period specified in the notice, in all respects as if that term were still unexpired.

The references in this subsection to the term for which a soldier was enlisted shall, where the term has been extended under subsection (1) of the last foregoing section, be construed as references to the term as so extended.

(3) A soldier of the regular forces for the time being continued in service under subsection (1) or (2) of this section may, within the prescribed period immediately preceding the date on which the period for which he is so continued will end, give notice to his commanding officer of his desire to continue further in army service after that date for such period, not exceeding five years, as may be specified in the notice; and if the competent military authority approve, he may, after that date, be further continued as a soldier of the regular forces, for the period specified in the notice, in all respects as if the term for which he was previously continued in service were still unexpired.

(4) The last foregoing subsection shall apply to soldiers of the regular forces continued in service thereunder as it applies to such soldiers continued in service under subsection (1) or (2) of this section.

(5) Section five of this Act shall not apply in the case of a soldier who is continued in service under this section; but any such soldier may claim his discharge at the expiration of the period of three months beginning with the date on which he gives to his commanding officer notice of his wish to be discharged.

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—cont.

(6) References in this section to periods of service shall, except so far as the context otherwise requires, be construed as including references to periods served in the reserve, but as not including—

(a) periods of whole-time or part-time service within the meaning of Part I of the National Service Act, 1948 ;  
or

(b) in relation to a soldier who was enlisted for a term ending with the expiration of a period beginning with the date of his attaining the age of eighteen years, any period during which he was under that age.

Postponement  
in certain  
cases of  
discharge or  
transfer to  
the reserve.

9.—(1) Where at the time at which apart from this section a soldier of the regular forces would be entitled to be discharged, or would fall to be transferred to the reserve, a state of war exists between Her Majesty and any foreign power, or men of the reserve are called out on permanent service, or he is serving outside the United Kingdom, he may be retained in army service for such period as is hereinafter mentioned, and his service may be prolonged accordingly.

(2) No person shall be retained in army service by virtue of this section later than the expiration of twelve months after the date on which apart from this section he would be entitled to be discharged.

(3) Subject to the provisions of the last foregoing subsection, a person who apart from this section would be entitled to be discharged may be retained in army service for such period as the competent military authority may order.

(4) Subject as aforesaid, a person who apart from this section would fall to be transferred to the reserve may be retained in army service for such period, ending not later than twelve months after the date on which apart from this section he would fall to be transferred to the reserve, as the competent military authority may order or for any period or further period during which men of the reserve continue called out on permanent service.

(5) If while a soldier is being retained in army service by virtue of this section it appears to the competent military authority that his services can be dispensed with, he shall be entitled to be discharged or transferred to the reserve as the case may require.

(6) Where, at the time at which under the foregoing provisions of this section a soldier is entitled to be discharged or transferred to the reserve, a state of war exists between Her Majesty and any foreign power, he may, by declaration made in the prescribed form before his commanding officer, agree to continue in army

service while such a state of war exists ; and if the competent military authority approve he may continue accordingly as if the period for which his term of service could be prolonged under the foregoing provisions of this section were a period continuing so long as a state of war exists :

Provided that if it is so specified in the declaration he shall be entitled to be discharged or transferred to the reserve, as the case may require, at the expiration of three months' notice given by him to his commanding officer.

(7) In relation to soldiers serving outside the United Kingdom, references in this section to being entitled to be transferred to the reserve shall be construed as references to being entitled to be sent to the United Kingdom with all convenient speed for the purpose of being transferred to the reserve.

10.—(1) In the case of imminent national danger or of great emergency Her Majesty in Council may by proclamation order that soldiers who would otherwise fall to be transferred to the reserve shall continue in army service ; and thereupon the last foregoing section shall apply to such soldiers as it applies while men of the reserve are called out on permanent service. Continuation of army service in imminent national danger.

(2) Any such proclamation may enable the Army Council from time to time to give, and when given to revoke or vary, such directions as may seem to them necessary or expedient for causing all or any of the soldiers mentioned in the proclamation to continue in army service.

(3) The danger or emergency which is the occasion of a proclamation under this section shall, if Parliament is then sitting, be communicated to Parliament before the proclamation is issued, and shall if Parliament is not then sitting be declared in the proclamation.

#### *Discharge and transfer to reserve*

11.—(1) Save as hereinafter provided every soldier of the regular forces, upon becoming entitled to be discharged, shall be discharged with all convenient speed but until discharged shall remain subject to military law. Discharge.

(2) Where a soldier of the regular forces enlisted in the United Kingdom is, when entitled to be discharged, serving out of the United Kingdom, then—

- (a) if he requires to be discharged in the United Kingdom, he shall be sent there free of cost with all convenient speed and shall be discharged on his arrival there or, if he consents to his discharge being delayed, within six months from his arrival ; but

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—cont.

(b) if at his request he is discharged at the place where he is serving he shall have no claim to be sent to the United Kingdom or elsewhere.

(3) Except in pursuance of the sentence of a court-martial (whether under this Act, the Naval Discipline Act or the Air Force Act, 1955), a soldier of the regular forces shall not be discharged unless his discharge has been authorised by order of the competent military authority or by authority direct from Her Majesty; and in any case the discharge of a soldier of the regular forces shall be carried out in accordance with Queen's Regulations.

(4) Every soldier of the regular forces shall on his discharge be given a certificate of discharge containing such particulars as may be prescribed.

(5) A soldier of the regular forces who is discharged in the United Kingdom shall be entitled to be conveyed free of cost from the place where he is discharged to the place stated in his attestation paper to be the place where he was attested or to any place at which he intends to reside and to which he can be conveyed with no greater cost.

Transfer to  
the reserve.

**12.**—(1) Every soldier of the regular forces upon falling to be transferred to the reserve shall be transferred to the reserve but until so transferred shall remain subject to military law.

(2) Where a soldier of the regular forces, when falling to be transferred to the reserve, is serving out of the United Kingdom, he shall be sent to the United Kingdom free of cost with all convenient speed and shall be transferred to the reserve on his arrival there, or if he consents to his transfer being delayed, within six months from his arrival:

Provided that if he so requests he may be transferred to the reserve without being required to return to the United Kingdom.

(3) A soldier who is transferred to the reserve in the United Kingdom shall be entitled to be conveyed free of cost from the place where he is transferred to the place stated in his attestation paper to be the place where he was attested or to any place at which he intends to reside and to which he can be conveyed with no greater cost:

Provided that he shall not be entitled to be conveyed to any place outside the United Kingdom.

Postponement  
of discharge  
or transfer  
pending  
proceedings  
for offences.

**13.**—(1) Notwithstanding anything in this Part of this Act, a soldier of the regular forces shall not be entitled to be discharged or transferred to the reserve at a time when he has become liable, as a person subject to military law, the Naval Discipline Act or air-force law, to be proceeded against for an offence against any of the provisions of this Act, the Naval Discipline Act or the Air Force Act, 1955:

Provided that if it is determined that the offence shall not be tried by court-martial this subsection shall cease to apply.

PART I  
—cont.

(2) Notwithstanding anything in this Part of this Act, a soldier of the regular forces who is outside the United Kingdom and serving a sentence of imprisonment or detention awarded by a court-martial under this Act, the Naval Discipline Act or the Air Force Act, 1955, shall not be entitled to be discharged or transferred to the reserve during the currency of the sentence.

14.—(1) A recruit shall be entitled to claim his discharge at any time within three months after the date of his attestation, and if he makes such a claim he shall on payment of a sum not exceeding twenty pounds be discharged with all convenient speed: Right of recruit to purchase discharge.

Provided that if the claim is made at a time when soldiers are required by a proclamation under section ten of this Act to continue in army service, he shall not be entitled to be discharged so long as they are so required to continue in army service.

(2) In this section the expression "recruit" means a person enlisted in accordance with the provisions of this Part of this Act who has not been previously so enlisted.

15. A warrant officer of the regular forces who is reduced to the ranks may thereupon claim to be discharged unless a state of war exists between Her Majesty and any foreign power or men of the reserve are called out on permanent service. Right of warrant officer to discharge on reduction to ranks.

16.—(1) Where it appears to the Army Council or any officer deputed by them that a soldier of the regular forces is— Discharge of soldiers of unsound mind.

(a) a dangerous person of unsound mind ; or

(b) a person of unsound mind requiring treatment in a mental hospital and having no relative who claims to take charge of him ; or

(c) a person of unsound mind having no relative willing to take charge of him,

the Army Council or officer deputed by them may if they or he think proper cause the soldier on his discharge to be received in a mental hospital in accordance with the following provisions of this section.

(2) Where the soldier has a home in Great Britain, the Regional Hospital Board for the area in which his home is situated shall, on request made by the Army Council or officer deputed by them, forthwith designate a mental hospital in their area, and the Army Council or officer shall by order direct that the soldier shall be received into that hospital.



PART I  
—cont.

(3) Where the soldier has a home in Northern Ireland—

- (a) the secretary or other officer of the Northern Ireland Hospitals Authority shall, on request made by the Army Council or officer deputed by them, forthwith designate a mental hospital in Northern Ireland, and the Army Council or officer deputed by them shall by order direct that the soldier shall be received into that hospital; and
- (b) the Army Council or officer deputed by them shall, if the case so requires, inform the welfare authority and that authority shall take such steps as may in their opinion be necessary to secure the welfare of the wife and children of the soldier.

(4) An order made under subsection (2) of this section shall have the like effect, and the like proceedings shall be taken thereon, as if it were an order under section sixteen of the Lunacy Act, 1890, or in Scotland an order of the sheriff made under section fourteen, or in the case of a soldier being a dangerous person of unsound mind, section fifteen, of the Lunacy (Scotland) Act, 1862; and an order under paragraph (a) of subsection (3) of this section shall have the like effect, and the like proceedings shall be taken thereon, as if it were an order made by a judicial authority under section ten of the Mental Health Act (Northern Ireland), 1948.

(5) Any question arising under this section whether, and if so where, a person has a home in Great Britain or Northern Ireland shall be decided by the Army Council or an officer deputed by them, and for the purposes of this section a person with no home in Great Britain or Northern Ireland may be treated as if he had a home in such area as may be determined by the Army Council or an officer deputed by them.

*Miscellaneous and supplementary provisions*

Forfeiture  
of service for  
desertion and  
restoration of  
forfeited  
service.

**17.**—(1) Where a soldier of the regular forces is convicted of desertion by court-martial, the period of his service as respects which he is convicted of having been a deserter shall be forfeited.

(2) Where any of a soldier's service is forfeited the provisions of this Part of this Act (except those relating to discharge by purchase) shall apply to him, and he shall be liable to serve, in like manner as if the appropriate date were the date of his attestation and he had, on the appropriate date, been duly enlisted to serve for the like term (both as respects duration and as respects liability to army service and any liability to serve in the reserve) as that for which he was in fact serving at the date of his conviction:

Provided that where at the date of his conviction the soldier was serving a term ending with the expiration of a period beginning with the date of his attaining the age of eighteen years and he had attained that age when he was convicted (whether or not he had attained it when the offence was committed) the duration of the term for which he is liable to serve shall be equal to that period and the time for which he is required to serve in army service shall be reduced accordingly.

(3) In the last foregoing subsection the expression “ the appropriate date ”—

- (a) if in consequence of subsection (1) of this section and an award of the court-martial under Part II of this Act the whole of his previous service is forfeited, means the date of his conviction ;
- (b) if in consequence of the said subsection (1) or that subsection and an award of the court-martial part only of his previous service is forfeited, means a date earlier than the date of his conviction by the length of service not forfeited.

(4) Notwithstanding anything in the foregoing provisions of this section, the right conferred on a soldier by subsection (1) of section five of this Act shall not be exercisable, in consequence of a forfeiture of service, at a time earlier than that at which it would have been exercisable apart from the forfeiture.

(5) The Army Council may by regulations make provision for the restoration in whole or in part of any forfeited service to a soldier in consideration of good service or on other grounds justifying the restoration of service forfeited.

(6) Where service of any description is restored to a person by virtue of the last foregoing subsection while he is in army service,—

- (a) the amount of the service so restored shall, subject to the provisions of the next following paragraph, be credited to him for the purpose of determining for the purposes of this Act the amount of service, army service or service in the reserve, as the case may require, which he has served or is liable to serve ; but
- (b) in the case of a person who, when his service is restored, is serving, or subsequently serves, on terms which entitle him to the right conferred by subsection (1) of section five of this Act the restoration shall not operate to alter the dates on which, by reason of the operation of subsection (2) of this section, his army service may be determined in pursuance of an exercise of that right.

PART I  
—cont.

(7) Nothing in this section shall apply to a person who deserts at a time when he is, under section eight of this Act, continued in service after the completion of twenty-two years' service.

Validity of  
attestation and  
enlistment.

**18.—(1)** Where a person has signed the declaration required by the First Schedule to this Act, and has thereafter received pay as a soldier of the regular forces,—

- (a) the validity of his enlistment shall not be called in question on the ground of any error or omission in his attestation paper ;
- (b) if within three months from the date on which he signed the said declaration he claims that his enlistment is invalid by reason of any non-compliance with the requirements of this Act as to enlistment or attestation, or any other ground whatsoever (not being an error or omission in his attestation paper) on which apart from this subsection the validity of his enlistment could have been called in question, the claim shall be submitted as soon as may be to the Army Council, and if the claim is well founded the Army Council shall cause him to be discharged with all convenient speed ;
- (c) subject to the provisions of the last foregoing paragraph, he shall be deemed as from the expiration of the said three months to have been validly enlisted notwithstanding any such non-compliance or other grounds as aforesaid ;
- (d) notwithstanding any such non-compliance or other grounds as aforesaid, or the making of a claim in pursuance of paragraph (b) of this subsection, he shall be deemed to be a soldier of the regular forces until his discharge.

In the case of a person who when he signed the said declaration had not attained the minimum age for man's service, paragraph (b) of this subsection shall have effect as if for the words "he claims" there were substituted the words "he, or any person whose consent to the enlistment was required under subsection (3) of section two of this Act but who did not duly consent, claims".

(2) Where a person has received pay as a soldier of the regular forces without having previously signed the declaration required by the First Schedule to this Act, then—

- (a) he shall be deemed to be a soldier of the regular forces until discharged ;
- (b) he may claim his discharge at any time, and if he does so the claim shall be submitted as soon as may be to the Army Council, who shall cause him to be discharged with all convenient speed.

(3) Nothing in the foregoing provisions of this section shall be construed as prejudicing the determination of any question as to the term for which a person was enlisted or as preventing the discharge of a person who has not claimed his discharge.

PART I  
—cont.

19.—(1) If a person appearing before a recruiting officer for the purpose of being attested knowingly makes a false answer to any question contained in the attestation paper and put to him by or by the direction of the recruiting officer, he shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding twenty pounds.

False answers  
in attestation  
paper.

(2) For the avoidance of doubt it is hereby declared that a person may be proceeded against under this section notwithstanding that he has since become subject to military law.

20.—(1) The following provisions of this Part of this Act shall not apply to persons enlisted in pursuance of the National Service Act, 1948, that is to say, the proviso to subsection (3) of section three, sections four to seven, section thirteen, section fifteen, section seventeen and subsection (2) of section eighteen; and section nine of this Act shall not apply to such persons by reason only that they are serving outside the United Kingdom.

Special  
provisions as  
to National  
Service men.

(2) Where a person enlisted in pursuance of the National Service Act, 1948, having been discharged from that enlistment before the end of his term of whole-time service under that Act for the purpose of entering on a regular engagement, enters on such an engagement at a time when he has not attained the age of twenty-one, the competent military authority shall give to the said person's next of kin a notification in the prescribed form stating that the said person has volunteered for a regular engagement and explaining the effect of the next following subsection

(3) Within twenty-eight days of the giving of a notification under the last foregoing subsection, any person entitled under the provisions of the Second Schedule to this Act to object to the said engagement may object thereto by notice in writing given to the prescribed military authority; and if such an objection is duly made the person to whom the objection relates shall be deemed not to have been discharged from his enlistment in pursuance of the National Service Act, 1948, or to have entered on the said regular engagement, but to have continued to serve under that enlistment.

(4) Any notification or notice under this section may be given by post.

(5) In this section the expression "next of kin", in relation to any person, means the person recorded as his next of kin in pursuance of the requirements as to records applying to soldiers

PART I  
—cont.

of the regular forces, and references to entry on a regular engagement are references to being enlisted for any such term as is mentioned in paragraph (a), (b) or (c) of subsection (2) of section four of this Act.

Service of  
aliens in  
regular forces.

**21.**—(1) Subject to the provisions of the two next following subsections the number of aliens who at any one time are serving (whether as officers or soldiers) in the regular forces shall not exceed one-fiftieth of the aggregate number at that time of those forces.

(2) In reckoning the number of aliens serving as aforesaid there shall be excluded persons enlisted outside the United Kingdom and serving in such units (if any) as may be prescribed, and officers serving in such units.

(3) The Army Council may by regulations provide that at any time at which a state of war exists between Her Majesty and any foreign power or while men of the reserve are called out on permanent service subsection (1) of this section shall have effect with the substitution for one-fiftieth of such other fraction as may be specified in the regulations.

(4) Nothing in section three of the Act of Settlement (which provides among other things that aliens are incapable of holding certain offices or places of trust) shall apply to an office or place of trust in the regular forces so long as the limit having effect under the foregoing provisions of this section is not exceeded.

(5) The Army Council may by regulations provide that in such cases as may be prescribed by the regulations it shall not be necessary to administer the oath of allegiance to an alien on his enlistment; and in relation to cases so prescribed this Act shall have effect with the omission of references to the administration and taking of the oath of allegiance.

Regulations  
as to  
enlistment.

**22.** The Army Council may make such regulations as appear to them necessary or expedient for the purposes of, or in connection with, the enlistment of recruits for the regular forces and generally for carrying this Part of this Act into effect.

Interpretation  
of Part I.

**23.**—(1) In this Part of this Act:—

“competent military authority” means the Army Council or any prescribed officer;

“date of attestation”, in relation to any person, means the date on which he signs the declaration and takes the oath mentioned in paragraph 3 of the First Schedule to this Act;

“minimum age for man’s service” has the meaning assigned to it by subsection (5) of section two of this Act;

“prescribed” means prescribed by regulations made under this Part of this Act ;

“recruiting officer” has the meaning assigned to it by section one of this Act ;

“reserve” means the first class of the army reserve.

(2) References in this Part of this Act to soldiers shall include references to warrant officers and to non-commissioned officers.

PART I  
—cont.

## PART II

### DISCIPLINE AND TRIAL AND PUNISHMENT OF MILITARY OFFENCES

#### *Treachery, cowardice and offences arising out of military service*

24.—(1) Any person subject to military law who with intent to assist the enemy— Aiding the enemy.

(a) abandons or delivers up any place or post which it is his duty to defend, or induces any person to abandon or deliver up any place or post which it is that person's duty to defend, or

(b) does any act calculated to imperil the success of operations of Her Majesty's forces, of any forces co-operating therewith or of any part of any of those forces, or

(c) having been made a prisoner of war, serves with or aids the enemy in the prosecution of hostilities or of measures calculated to influence morale, or in any other manner whatsoever not authorised by international usage, or

(d) furnishes the enemy with arms or ammunition or with supplies of any description, or

(e) harbours or protects an enemy not being a prisoner of war,

shall, on conviction by court-martial, be liable to suffer death or any other punishment provided by this Act.

(2) Any person subject to military law who knowingly and without lawful excuse does any of the acts specified in paragraphs (a) to (e) of the last foregoing subsection shall, where it is not proved that he acted with intent to assist the enemy, be liable on conviction by court-martial to imprisonment or any less punishment provided by this Act.

25.—(1) Any person subject to military law who with intent to assist the enemy communicates with or gives intelligence to the enemy shall, on conviction by court-martial, be liable to suffer death or any other punishment provided by this Act. Communication with the enemy

(2) Any person subject to military law who without authority communicates with or gives intelligence to the enemy shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.



PART II  
—cont

(3) In this section the expression “intelligence” means information which is or purports to be information as to any matter such that information about it would or might be directly or indirectly useful to an enemy, and in particular (but without prejudice to the generality of the foregoing provisions of this subsection) as to any matter falling within the following paragraphs, being a matter such that information as to it would or might be useful as aforesaid, that is to say:—

- (a) the number, description, armament, equipment, disposition, movement or condition of any of Her Majesty’s forces or of any forces co-operating therewith, or any of Her Majesty’s ships or aircraft or of the ships or aircraft of any such co-operating force;
- (b) any operations or projected operations of any of such forces, ships or aircraft as aforesaid;
- (c) any code, cipher, call sign, password or countersign;
- (d) any measures for the defence or fortification of any place on behalf of Her Majesty;
- (e) the number, description or location of any prisoners of war;
- (f) munitions of war.

Cowardly  
behaviour.

**26.—**(1) Any person subject to military law who when before the enemy—

- (a) leaves the post, position or other place where it is his duty to be, or
- (b) throws away his arms, ammunition or tools,

in such a manner as to show cowardice, or otherwise behaves in such a manner as to show cowardice, shall be guilty of an offence against this section.

(2) Any person subject to military law who when before the enemy induces other persons subject to military law and before the enemy to commit an offence under the last foregoing subsection shall be guilty of an offence against this section.

(3) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

Offences  
against  
morale.

**27.** Any person subject to military law who—

- (a) spreads (whether orally, in writing, by signal, or otherwise) reports relating to operations of Her Majesty’s forces, of any forces co-operating therewith, or of any part of any of those forces, being reports calculated to create despondency or unnecessary alarm,
- or

(b) when before the enemy uses words calculated to create despondency or unnecessary alarm,

PART II  
—cont.

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

28.—(1) Any person subject to military law who, through disobedience to orders or wilful neglect of his duty, is captured by the enemy shall be guilty of an offence against this section. Becoming prisoner of war through disobedience or wilful neglect; and failure to rejoin forces.

(2) Any person subject to military law who, having been captured by the enemy, fails to take, or prevents or discourages any other such person captured by the enemy from taking, any reasonable steps to rejoin Her Majesty's service which are available to him or, as the case may be, to that other person shall be guilty of an offence against this section.

(3) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

29.—(1) Any person subject to military law who while on guard duty— Offences by or in relation to sentries, etc.

(a) sleeps at his post, or

(b) when not on duty at a post, is asleep at a time when he is not allowed to be asleep, or

(c) is drunk, or

(d) leaves his post without having been regularly relieved or otherwise absents himself from any place where it is his duty to be,

shall be guilty of an offence against this section.

(2) For the purposes of this section a person shall be treated as being drunk if owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty.

(3) Any person subject to military law who strikes or otherwise uses force against any person on guard duty, being a member of any of Her Majesty's forces or of any forces co-operating therewith, or by the threat of force compels any such person to let him or any other person pass, shall be guilty of an offence against this section.

(4) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offence was not committed on active service he shall not be liable to be imprisoned for more than two years.

PART II  
—cont.

(5) References in this section to a person on guard duty are references to a person who—

- (a) is posted or ordered to patrol, or
- (b) is a member of a guard or other party mounted or ordered to patrol,

for the purpose of protecting any persons, premises or place.

(6) The foregoing provisions of this section shall apply in relation to persons posted or ordered to patrol, or members of a party mounted or ordered to patrol, for the purpose of preventing or controlling access to or egress from any premises or place, or of regulating traffic by road, by rail or on any inland navigation, as they apply to persons on guard duty.

## Looting.

30. Any person subject to military law who—

- (a) steals from, or with intent to steal searches, the person of anyone killed or wounded in the course of warlike operations, or
- (b) steals any property which has been left exposed or unprotected in consequence of warlike operations, or
- (c) takes otherwise than for the public service any vehicle, equipment or stores abandoned by the enemy,

shall be guilty of looting and liable, on conviction by court-martial, to imprisonment or any less punishment provided by this Act.

*Mutiny and insubordination*

## Mutiny.

31.—(1) Any person subject to military law who—

- (a) takes part in a mutiny involving the use of violence or the threat of the use of violence, or having as its object or one of its objects the refusal or avoidance of any duty or service against, or in connection with operations against, the enemy, or the impeding of the performance of any such duty or service, or
- (b) incites any person subject to service law to take part in such a mutiny, whether actual or intended,

shall, on conviction by court-martial, be liable to suffer death or any other punishment provided by this Act.

(2) Any person subject to military law who, in a case not falling within the last foregoing subsection, takes part in a mutiny, or incites any person subject to service law to take part in a mutiny, whether actual or intended, shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(3) In this Act the expression “mutiny” means a combination between two or more persons subject to service law, or between persons two at least of whom are subject to service law—

- (a) to overthrow or resist lawful authority in Her Majesty’s forces or any forces co-operating therewith or in any part of any of the said forces,
- (b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any duty or service against, or in connection with operations against, the enemy, or
- (c) to impede the performance of any duty or service in Her Majesty’s forces or in any forces co-operating therewith or in any part of any of the said forces ;

and in this section the expression “service law” means military law, the Naval Discipline Act or air-force law.

32. Any person subject to military law who, knowing that a mutiny is taking place or is intended,—

Failure to suppress mutiny.

- (a) fails to use his utmost endeavours to suppress or prevent it, or
- (b) fails to report without delay that the mutiny is taking place or is intended,

shall on conviction by court-martial,—

- (i) if his offence was committed with intent to assist the enemy, be liable to suffer death or any other punishment provided by this Act,
- (ii) in any other case, be liable to imprisonment or any less punishment provided by this Act.

33.—(1) Any person subject to military law who—

Insubordinate behaviour.

- (a) strikes or otherwise uses violence to, or offers violence to, his superior officer, or
- (b) uses threatening or insubordinate language to his superior officer,

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that he shall not be liable to be imprisoned for more than two years if the offence was not committed on active service and did not involve the striking or other use of violence, or offering of violence, to a superior officer exercising authority as such.

(2) In the foregoing provisions of this section the expression “superior officer”, in relation to any person, means an officer, warrant officer or non-commissioned officer of the regular forces

**PART II**  
**—cont.**

of superior rank, and includes an officer, warrant officer or non-commissioned officer of those forces of equal rank but greater seniority while exercising authority as the said person's superior.

**Disobedience  
to particular  
orders.**

**34.—**(1) Any person subject to military law who, in such manner as to show a wilful defiance of authority, disobeys any lawful command given or sent to him personally shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(2) Any person subject to military law who, whether wilfully or through neglect, disobeys any lawful command shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offence was not committed on active service he shall not be liable to be imprisoned for more than two years.

**Obstruction  
of provost  
officers.**

**35.** Any person subject to military law who—

(a) obstructs, or

(b) when called on, refuses to assist,

any person known to him to be a provost officer, or to be a person (whether subject to military law or not) legally exercising authority under or on behalf of a provost officer, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**Disobedience  
to standing  
orders.**

**36.—**(1) Any person subject to military law who contravenes or fails to comply with any provision of orders to which this section applies, being a provision known to him, or which he might reasonably be expected to know, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) This section applies to standing orders or other routine orders of a continuing nature made for any formation or unit or body of troops, or for any command or other area, garrison or place, or for any ship, train or aircraft.

*Desertion, absence without leave, etc.*

**Desertion.**

**37.—**(1) Any person subject to military law who—

(a) deserts, or

(b) persuades or procures any person subject to military law to desert,

shall, on conviction by court-martial be liable to imprisonment or any less punishment provided by this Act:

PART II  
—cont.

Provided that a person shall not be liable to be imprisoned for more than two years unless—

- (i) if the offence was against paragraph (a) of this subsection he was on active service or under orders for active service at the time when it was committed,
  - (ii) if the offence was an offence against paragraph (b) of this subsection, the person in relation to whom it was committed was on active service or under orders for active service at that time.
- (2) For the purposes of this Act a person deserts who—
- (a) leaves Her Majesty's service or, when it is his duty to do so, fails to join or rejoin Her Majesty's service, with (in either case) the intention, subsisting at the time of the leaving or failure or formed thereafter, of remaining permanently absent from his duty, or
  - (b) being an officer enlists in or enters any of Her Majesty's forces without having resigned his commission, or being a warrant officer, non-commissioned officer or soldier enlists in or enters any of Her Majesty's forces without having been discharged from his previous enlistment, or
  - (c) absents himself without leave with intent to avoid serving at any place overseas or to avoid service or any particular service when before the enemy,

and references in this Act to desertion shall be construed accordingly.

(3) In addition to or in lieu of any punishment authorised by subsection (1) of this section, the court-martial by whom a warrant officer, non-commissioned officer or soldier of the regular forces is convicted of desertion may direct that the whole or any part of his service previous to the period as respects which he is convicted of having been a deserter shall be forfeited:

Provided that this subsection shall not apply to a person enlisted in pursuance of the National Service Act, 1948.

**38. Any person subject to military law who—**

Absence  
without leave.

- (a) absents himself without leave, or
- (b) persuades or procures any person subject to military law to absent himself without leave,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.



**PART II**  
—cont.

Assisting and  
concealing  
desertion and  
absence  
without leave.

**39. Any person subject to military law who—**

- (a) knowingly assists any person subject to military law to desert or absent himself without leave, or
- (b) knowing that any person subject to military law has deserted or absented himself without leave, or is attempting to desert or absent himself without leave, fails to report that fact without delay, or fails to take any steps in his power to cause that person to be apprehended,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Falsely  
obtaining or  
prolonging  
leave.

**40. Any person subject to military law who for the purpose of obtaining leave or prolonging his leave knowingly makes any false statement to any military authority, to a member of any police force or to any person authorised by or under instructions of the Army Council to act for the purpose of obtaining prolongation of leave shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.**

Failure to  
perform  
military  
duties.

**41. Any person subject to military law who without reasonable excuse fails to attend for any parade or other military duty of any description or leaves any such parade or duty as aforesaid before he is permitted to do so shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.**

*Malingering and drunkenness*

Malingering.

**42.—(1) Any person subject to military law who—**

- (a) falsely pretends to be suffering from sickness or disability, or
- (b) injures himself with intent thereby to render himself unfit for service, or causes himself to be injured by any person with that intent, or
- (c) injures another person subject to military law, at the instance of that person, with intent thereby to render that person unfit for service, or
- (d) with intent to render or keep himself unfit for service, does or fails to do any thing (whether at the time of the act or omission he is in hospital or not) whereby he produces, or prolongs or aggravates, any sickness or disability,

shall be guilty of malingering and shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

PART II  
—cont.

(2) In this section the expression “ unfit ” includes temporarily unfit.

43.—(1) Any person subject to military law who is guilty of Drunkenness, drunkenness, whether on duty or not, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act and, in the case of a warrant officer, non-commissioned officer or soldier, either in addition to or without any other punishment to pay a fine not exceeding five pounds :

Provided that where the offence is committed by a warrant officer, non-commissioned officer or soldier neither on active service nor on duty the sentence imposed shall not exceed detention for a period of six months with or without a fine.

(2) For the purposes of this section a person is guilty of drunkenness if owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty or with any duty which he may be called upon to perform, or behaves in a disorderly manner or in any manner likely to bring discredit on Her Majesty's service.

#### *Offences relating to property*

44. Any person subject to military law who—

Offences in  
relation to  
public and  
service  
property.

- (a) steals or fraudulently misapplies any public or service property, or is concerned in or connives at the stealing or fraudulent misapplication of any public or service property, or
- (b) receives any public or service property knowing it to have been stolen or to have been fraudulently misapplied, or
- (c) wilfully damages, or is concerned in the wilful damage of, any public or service property, or
- (d) by wilful neglect causes damage by fire to any public or service property,

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

45. Any person subject to military law who—

Offences in  
relation to  
property of  
members of  
forces.

- (a) steals or fraudulently misapplies any property belonging to a person subject to military law, or is concerned in or connives at the stealing or fraudulent misapplication of any such property, or

PART II  
—cont.

- (b) receives any such property knowing it to have been stolen or to have been fraudulently misapplied, or
- (c) wilfully damages, or is concerned in the wilful damage of, any property belonging to a person subject to military law,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Miscellaneous  
offences  
relating to  
property.**46.** Any person subject to military law who—

- (a) loses, or by negligence damages, any public or service property of which he has the charge or which has been entrusted to his care or which forms part of property of which he has the charge or which has been entrusted to his care, or
- (b) by negligence causes damage by fire to any public or service property, or
- (c) loses, or by negligence damages, any clothing, arms, ammunition or other equipment issued to him for his use for military purposes, or
- (d) fails to take proper care of any animal or bird used in the public service which is in his charge, or
- (e) makes away (whether by pawning, selling, destruction or in any other way) with any military, naval or air-force decoration granted to him or any clothing, arms, ammunition or other equipment issued to him for his use for military purposes,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act:

Provided that it shall be a defence for any person charged under this section with losing any property, clothing, arms, ammunition or other equipment that he took reasonable steps for the care and preservation thereof.

*Offences relating to billeting and requisitioning of vehicles*Billeting  
Offences.**47.** Any person subject to military law who—

- (a) knowing that no billeting requisition is in force under Part IV of this Act authorising him to demand any billets or that he is otherwise not authorised to demand them, obtains those billets or orders or procures another person to obtain them;
- (b) takes or agrees to take, or demands, from a person on whom he or any other person or any vehicle is or is to be billeted in pursuance of a billeting requisition

under Part IV of this Act any money or thing as consideration for not requiring, or ceasing to require, accommodation for himself or the said other person or standing room for the vehicle ; or

PART II  
—cont.

- (c) commits any offence against the person or property of the occupier of premises in which he is billeted in pursuance of a billeting requisition under Part IV of this Act or of any other person being in those premises, or against any other property in those premises, or wilfully or by wilful neglect damages those premises or any such property as aforesaid,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

48.—(1) Any person subject to military law who—

Offences in  
relation to  
requisitioning  
of vehicles.

- (a) knowing that no requisitioning order is in force under Part IV of this Act authorising him to give directions for the provision of any vehicle, or that he is otherwise not authorised to give such directions, gives directions for the provision of the vehicle or orders or procures another person to give such directions, or
- (b) in purported exercise of powers conferred by a requisitioning order under Part IV of this Act takes, or orders or procures any other person to take, possession of a vehicle, knowing that no requisitioning order is in force under the said Part IV under which the taking possession of the vehicle could be authorised, or that the taking possession thereof is otherwise not authorised under such an order, or
- (c) takes or agrees to take, or demands, from any person any money or thing as consideration for directions, or any particular directions, for the provision of a vehicle not being given, or possession of a vehicle not being taken, or not being retained, under a requisitioning order under Part IV of this Act,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) The last foregoing subsection shall apply in relation to horses, mules, food, forage and stores (within the meaning of Part IV of this Act) as it applies in relation to vehicles.

#### *Flying etc. offences*

49. Any person subject to military law who is guilty of any Dangerous act or neglect in flying, or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is flying, etc.

PART II  
—cont.

likely to cause loss of life or bodily injury to any person shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offender has not acted wilfully or with wilful neglect he shall not be liable to be imprisoned for more than two years.

Inaccurate  
certification of  
aircraft, etc.

**50.** Any person subject to military law who signs any certificate in relation to an aircraft or to aircraft material without ensuring the accuracy of the certificate shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

## Low flying.

**51.** Any person subject to military law who, being the pilot of one of Her Majesty's aircraft, flies it at a height less than such height as may be provided by any regulations issued under the authority of the Army Council, the Admiralty or the Air Council, except—

(a) while taking off or alighting, or

(b) in such other circumstances as may be so provided, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Annoyance  
by flying.

**52.** Any person subject to military law who, being the pilot of one of Her Majesty's aircraft, flies it so as to cause, or to be likely to cause, unnecessary annoyance to any person shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

*Offences relating to, and by, persons in custody*Irregular  
arrest and  
confinement.

**53.—(1)** Any person subject to military law who, when another person subject thereto is under arrest,—

(a) unnecessarily delays the taking of such steps as it is his duty to take for investigating the allegations against that other person or for having the allegations against that other person investigated by his commanding officer or the appropriate superior authority or, as the case may be, tried by court-martial; or

(b) fails to release, or effect the release of, that other person when it is his duty to do so,

shall be guilty of an offence against this section.

(2) Any person subject to military law who, having committed a person (hereinafter referred to as "the prisoner") to the custody of any provost officer or other officer, or any warrant

officer or non-commissioned officer, fails without reasonable cause to deliver—

(a) at the time of the committal, or

(b) if it is not practicable so to do at the time of the committal, then within twenty-four hours thereafter,

to the person to whose custody the prisoner was committed a report in writing signed by himself of the offence which the prisoner is alleged to have committed, shall be guilty of an offence against this section.

(3) Where any person (hereinafter referred to as “the prisoner”) is committed to the charge of a person subject to military law who is in command of a guard, then if without reasonable cause that person does not as soon as he is relieved from his guard and any further duty, or, if he is not sooner relieved, within twenty-four hours after the committal, give to the officer to whom it is his duty to report—

(a) a written statement containing so far as known to him, the prisoner’s name and alleged offence and the name and rank or other description of the officer or other person by whom the prisoner is alleged to have committed the offence, and

(b) if he has received it, the report required by the last foregoing subsection,

he shall be guilty of an offence against this section.

(4) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

54.—(1) Any person subject to military law who wilfully allows to escape any person who is committed to his charge, or whom it is his duty to guard, shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act. Permitting escape, and unlawful release of prisoners.

(2) Any person subject to military law who—

(a) without proper authority releases any person who is committed to his charge, or

(b) without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to guard,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.



**PART II**  
—cont.

Resistance  
to arrest.

**55.**—(1) Any person subject to military law who, being concerned in any quarrel or disorder, refuses to obey any officer who orders him into arrest, or strikes or otherwise uses violence to, or offers violence to, any such officer, shall be guilty of an offence against this section whether or not the officer is his superior officer.

(2) Any person subject to military law who strikes or otherwise uses violence to, or offers violence to, any person, whether subject to military law or not, whose duty it is to apprehend him or in whose custody he is shall be guilty of an offence against this section.

(3) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Escape from  
confinement.

**56.** Any person subject to military law who escapes from arrest, prison or other lawful custody (whether military or not), shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

*Offences in relation to courts-martial and civil authorities*

Offences in  
relation to  
courts-martial.

**57.**—(1) Any person subject to military law who—

- (a) having been duly summoned or ordered to attend as a witness before a court-martial, fails to comply with the summons or order, or
- (b) refuses to swear an oath when duly required by a court-martial to do so, or
- (c) refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to produce, or
- (d) when a witness, refuses to answer any question which a court-martial has lawfully required him to answer, or
- (e) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court, or
- (f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court,

shall, on conviction by a court-martial, other than the court in relation to which the offence was committed, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) Notwithstanding anything in the last foregoing subsection, where an offence against paragraph (e) or (f) of that subsection is committed in relation to any court-martial held in pursuance of this Act that court, if of opinion that it is expedient that the offender should be dealt with summarily by the court instead of being brought to trial before another court-martial, may by order under the hand of the president order the offender to be imprisoned for a period not exceeding twenty-one days, or, in the case of a warrant officer, non-commissioned officer or soldier, either to be imprisoned for such a period or to undergo detention for such a period.

(3) References in paragraphs (a) to (f) of subsection (1) of this section to a court-martial shall include references to a court-martial held in pursuance of the Naval Discipline Act, the Air Force Act, 1955, or the law of any colony.

**58.**—(1) Any person subject to military law who, having been lawfully sworn as a witness or as an interpreter in proceedings before a court-martial or before any board or person having power by virtue of this Act to administer oaths, makes a statement material in those proceedings which he knows to be false or does not believe to be true shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act. False evidence.

(2) A person shall not be liable to be convicted of an offence against this section solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

**59.** Any person subject to military law who at any place in Her Majesty's dominions prevents or obstructs— Obstruction  
of constable  
arresting  
officer or  
soldier.

- (a) the execution by a constable of a warrant for the arrest of a person subject to military law who has committed or is suspected of having committed an offence punishable on conviction by a civil court, or
- (b) the arrest of a person subject to military law by a constable acting in the exercise of his powers of arrest without warrant,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### *Miscellaneous offences*

**60.**—(1) Any person subject to military law who without authority discloses, whether orally, in writing, by signal or by any other means whatsoever, any information which is or purports to be information useful to an enemy shall, on conviction Injurious  
disclosures.

PART II  
—cont.

by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) In this section the expression “information useful to an enemy” means information as to any matter such that information as to it would or might be directly or indirectly useful to an enemy, and in particular (but without prejudice to the generality of the foregoing provisions of this subsection) information as to any matter falling within the following paragraphs, being a matter such that information as to it would or might be useful as aforesaid, that is to say:—

- (a) the number, description, armament, equipment, disposition, movement or condition of any of Her Majesty’s forces or of any forces co-operating therewith, or any of Her Majesty’s ships or aircraft or of the ships or aircraft of any such co-operating force ;
- (b) any operations or projected operations of any of such forces, ships or aircraft as aforesaid ;
- (c) any code, cipher, call sign, password or countersign ;
- (d) any measures for the defence or fortification of any place on behalf of Her Majesty ;
- (e) the number, description or location of any prisoners of war ;
- (f) munitions of war.

Making of  
false  
statements on  
enlistment,

**61.** Any person who, when before a recruiting officer for the purpose of being attested in pursuance of Part I of this Act, has knowingly made a false answer to any question contained in the attestation paper and put to him by or by the direction of the recruiting officer shall if he has since become and remains subject to military law be liable, on conviction by court-martial, to the like imprisonment as on summary conviction of an offence against section nineteen of this Act or to any less punishment provided by this Act.

Making of  
false  
documents,

**62.** Any person subject to military law who—

- (a) makes, signs or makes an entry in any service report, return, pay list or certificate or other service document, being a document or entry which is to his knowledge false in a material particular, or
- (b) alters any service report, return, pay list or certificate or other service document, or alters any entry in such a document, so that the document or entry is to his knowledge false in a material particular, or suppresses, defaces or makes away with any such document or entry which it is his duty to preserve or produce, or

(c) with intent to defraud, fails to make an entry in any such document, or

PART II  
—cont.

(d) aids, abets, commands, counsels, procures or connives at the commission by another person subject to military law of an offence against this section (whether or not he knows the nature of the document in relation to which that offence will be committed),

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

63. Any person subject to military law who, in any country or territory outside the United Kingdom, commits any offence against the person or property of any member of the civil population shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act. Offences against civilian population.

64. Every officer subject to military law who behaves in a scandalous manner, unbecoming the character of an officer and a gentleman, shall, on conviction by court-martial, be cashiered. Scandalous conduct of officer.

65. If—

(a) any officer subject to military law strikes or otherwise ill-treats any officer subject thereto of inferior rank or less seniority or any warrant officer, non-commissioned officer or soldier subject to military law, or

Ill-treatment of officers or men of inferior rank.

(b) any warrant officer or non-commissioned officer subject to military law strikes or otherwise ill-treats any person subject to military law, being a warrant officer or non-commissioned officer of inferior rank or less seniority or a soldier,

he shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

66. Any person subject to military law who is guilty of disgraceful conduct of a cruel, indecent or unnatural kind shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act. Disgraceful conduct.

67. Any person subject to military law who—

(a) makes an accusation against any officer, warrant officer, non-commissioned officer or soldier subject to military law, which he knows to be false or does not believe to be true, or

False accusation, etc.

PART II  
—cont.

- (b) in making a complaint where he thinks himself wronged, makes a statement affecting the character of an officer, warrant officer, non-commissioned officer or soldier subject to military law, which he knows to be false or does not believe to be true, or wilfully suppresses any material facts,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Attempts  
to commit  
military  
offences.

68. Any person subject to military law who attempts to commit an offence against any of the foregoing provisions of this Part of this Act shall, on conviction by court-martial, be liable to the like punishment as for that offence:

Provided that if the offence is one punishable by death, he shall not be liable to any greater punishment than imprisonment.

Conduct to  
prejudice of  
military  
discipline.

69. Any person subject to military law who is guilty of any act, conduct or neglect to the prejudice of good order and military discipline shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

*Civil offences*

## Civil offences.

70.—(1) Any person subject to military law who commits a civil offence, whether in the United Kingdom or elsewhere, shall be guilty of an offence against this section.

(2) In this Act the expression “civil offence” means any act or omission punishable by the law of England or which, if committed in England, would be punishable by that law; and in this Act the expression “the corresponding civil offence” means the civil offence the commission of which constitutes the offence against this section.

(3) A person convicted by court-martial of an offence against this section shall —

- (a) if the corresponding civil offence is treason or murder, be liable to suffer death;
- (b) in any other case, be liable to suffer any punishment or punishments which a civil court could award for the corresponding civil offence, if committed in England, being a punishment or punishments provided by this Act, or such punishment, less than the maximum punishment which a civil court could so award, as is so provided:

Provided that where a civil court could not so award imprisonment, a person so convicted shall be liable to suffer such punishment, less than cashiering in the case of an officer, or detention in the case of a warrant officer, non-commissioned officer or soldier, as is so provided.

(4) A person shall not be charged with an offence against this section committed in the United Kingdom if the corresponding civil offence is treason, murder, manslaughter, treason-felony or rape.

(5) Where the corresponding civil offence is murder or manslaughter, an offence against this section shall be deemed, for the purposes of the last foregoing subsection, to have been committed at the place of the commission of the act or occurrence of the neglect which caused the death, irrespective of the place of the death.

### *Punishments*

71.—(1) The punishments which may be awarded to an officer Punishment  
by sentence of a court-martial under this Act are, subject to of officers.  
the limitations hereinafter provided on the powers of certain courts-martial, those set out in the following scale; and in relation to an officer references in this Act to punishments provided by this Act are references to those punishments.

(2) The said scale is:—

- (a) death;
- (b) imprisonment;
- (c) cashiering;
- (d) dismissal from Her Majesty's service;
- (e) forfeiture in the prescribed manner of seniority of rank, either in the army or in the corps to which the offender belongs, or in both;
- (f) severe reprimand or reprimand;
- (g) where the offence has occasioned any expense, loss or damage, stoppages.

(3) For the purposes of this Part of this Act a punishment specified in any paragraph of the said scale shall be treated as less than the punishments specified in the preceding paragraphs, and greater than those specified in the following paragraphs, of the scale.

(4) Save as expressly provided in this Act, not more than one punishment shall be awarded by a court-martial for one offence.

(5) Stoppages may be awarded by a court-martial either in addition to or without any other punishment.

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—cont.

(6) A severe reprimand or reprimand may be awarded by a court-martial in addition to forfeiture of seniority of rank.

(7) Where an officer is sentenced by a court-martial to imprisonment he shall also be sentenced to be cashiered :

Provided that if the court-martial fails to sentence him to be cashiered, the sentence of imprisonment shall not be invalid but shall be deemed to include a sentence of cashiering.

Punishment of  
other ranks.

**72.**—(1) The punishments which may be awarded to a warrant officer, non-commissioned officer or soldier by sentence of a court-martial under this Act are, subject to the limitations hereinafter provided on the powers of certain courts-martial, those set out in the following scale ; and in relation to a warrant officer, non-commissioned officer or soldier references in this Act to punishments provided by this Act are references to those punishments.

(2) The said scale is :—

- (a) death ;
- (b) imprisonment ;
- (c) discharge with ignominy from Her Majesty's service ;
- (d) in the case of a warrant officer, dismissal from Her Majesty's service ;
- (e) detention for a term not exceeding two years ;
- (f) in the case of a warrant officer or non-commissioned officer, reduction to the ranks or any less reduction in rank ;
- (g) in the case of a warrant officer or non-commissioned officer, forfeiture in the prescribed manner of seniority of rank ;
- (h) where the offence is desertion, forfeiture of service ;
- (i) in the case of a warrant officer or non-commissioned officer, severe reprimand or reprimand ;
- (j) where the offence was committed on active service, forfeiture of pay for a period beginning with the day of the sentence and not exceeding ninety days ;
- (k) where the offence is drunkenness, a fine ;
- (l) where the offence has occasioned any expense, loss or damage, stoppages.

(3) For the purposes of this Part of this Act a punishment specified in any paragraph of the said scale shall be treated



as less than the punishments specified in the preceding paragraphs, and greater than those specified in the following paragraphs, of the scale :

PART II  
—cont.

Provided that detention shall not be deemed to be a less punishment than imprisonment if the term of detention is longer than the term of imprisonment.

(4) Save as expressly provided in this Act, not more than one punishment shall be awarded by a court-martial for one offence.

(5) A warrant officer, non-commissioned officer or soldier sentenced by a court-martial to imprisonment may in addition thereto be sentenced to be discharged with ignominy from Her Majesty's service, and a warrant officer sentenced by a court-martial to imprisonment may in addition thereto be sentenced to dismissal from Her Majesty's service.

(6) Where a warrant officer or non-commissioned officer is sentenced by a court-martial to imprisonment or detention, he shall also be sentenced to be reduced to the ranks :

Provided that if the court-martial fail to sentence him to be so reduced, the sentence shall not be invalid but shall be deemed to include a sentence of reduction to the ranks.

(7) In the case of a warrant officer or non-commissioned officer a severe reprimand or reprimand may be awarded by a court-martial in addition to forfeiture of seniority of rank.

(8) For an offence committed on active service forfeiture of pay may be awarded by a court-martial in addition to field punishment, severe reprimand or reprimand.

(9) Stoppages may be awarded by a court-martial either in addition to or without any other punishment.

(10) Where an offender has been sentenced by a court-martial (whether under this Act, the Naval Discipline Act or the Air Force Act, 1955) to detention, then if he is subsequently sentenced by a court-martial under this Act to imprisonment any part of the sentence of detention which has not been served shall thereupon be remitted by virtue of this subsection.

(11) Without prejudice to the validity of any award, an offender shall not be kept continuously in detention under this Act for more than two years.

**73.**—(1) In relation to an offence committed by a warrant officer, non-commissioned officer or soldier on active service, the scale set out in subsection (2) of the last foregoing section shall have effect as if after paragraph (e) thereof there were inserted the following paragraph :—

“(ee) field punishment for a period not exceeding ninety days”,

and subsection (6) of the last foregoing section shall apply to field punishment as it applies to imprisonment or detention.

PART II  
—cont.

(2) Field punishment shall consist of such duties or drills, in addition to those which the offender might be required to perform if he were not undergoing punishment, and such loss of privileges, as may be provided by or under rules to be made by the Secretary of State, and may include confinement in such place and manner as may be so provided and such personal restraint as may be necessary to prevent the escape of the offender and as may be so provided.

(3) Rules under this section may contain such incidental and supplementary provisions as appear to the Secretary of State to be requisite for the purposes of the rules.

(4) The power to make rules under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Arrest*Power to  
arrest  
offenders.

**74.**—(1) Any person subject to military law found committing an offence against any provision of this Act, or alleged to have committed or reasonably suspected of having committed any such offence, may be arrested in accordance with the following provisions of this section.

(2) An officer may be arrested by an officer of the regular forces of superior rank, or, if engaged in a quarrel or disorder, by such an officer of any rank.

(3) A warrant officer, non-commissioned officer or soldier may be arrested by any officer, warrant officer or non-commissioned officer of the regular forces:

Provided that a person shall not be arrested by virtue of this subsection except by a person of superior rank.

(4) A provost officer, or any officer, warrant officer, petty officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, may arrest any officer, warrant officer, non-commissioned officer or soldier:

Provided that an officer shall not be arrested by virtue of this subsection except on the order of another officer.

(5) The power of arrest given to any person by this section may (subject to the provisions of Queen's Regulations) be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest.

Provisions for  
avoiding delay  
after arrest.

**75.**—(1) The allegations against any person subject to military law who is under arrest shall be duly investigated without unnecessary delay, and as soon as may be either proceedings shall be taken for punishing his offence or he shall be released from arrest.

(2) Wherever any person subject to military law, having been taken into military custody, remains under arrest for a longer period than eight days without a court-martial for his trial being assembled, a special report on the necessity for further delay shall be made by his commanding officer to the prescribed authority in the prescribed manner, and a similar report shall be made to the like authority and in the like manner every eight days until a court-martial is assembled or the offence is dealt with summarily or he is released from arrest:

Provided that in the case of a person on active service compliance with this subsection shall be excused in so far as it is not reasonably practicable having regard to the exigencies of military operations.

(3) For the purposes of subsection (1) of section fifty-three of this Act the question whether there has been unnecessary delay in the taking of any steps for the investigation of allegations against a person under arrest shall be determined without regard to the provisions of the last foregoing subsection.

*Investigation of, and summary dealing with, charges*

**76.** Before an allegation against a person subject to military law (hereinafter referred to as “the accused”) that he has committed an offence against any provision of this Part of this Act is further proceeded with, the allegation shall be reported, in the form of a charge, to the accused’s commanding officer and the commanding officer shall investigate the charge in the prescribed manner.

Investigation  
of charges by  
commanding  
officer.

**77.**—(1) After investigation, a charge against an officer below the rank of lieutenant-colonel or against a warrant officer may, if an authority has power under the following provisions of this Part of this Act to deal with it summarily, be so dealt with by that authority (in this Act referred to as “the appropriate superior authority”) in accordance with those provisions.

Charges to be  
dealt with  
summarily or  
by  
court-martial.

(2) After investigation, a charge against a non-commissioned officer or soldier may be dealt with summarily by his commanding officer, subject to and in accordance with the following provisions of this Part of this Act.

(3) Any charge not dealt with summarily as aforesaid shall after investigation be remanded for trial by court-martial.

(4) Notwithstanding anything in the foregoing provisions of this section, where—

(a) the commanding officer has investigated a charge against an officer or warrant officer, or

**PART II**  
—cont.

(b) the commanding officer has investigated a charge against a non-commissioned officer or soldier which is not one which can be dealt with summarily, the commanding officer may dismiss the charge if he is of opinion that it ought not to be further proceeded with.

(5) References in this Act to dealing summarily with a charge are references to the taking by the appropriate superior authority or the commanding officer of the accused, as the case may require, of the following action, that is to say, determining whether the accused is guilty, dismissing the charge or recording a finding of guilty accordingly, and awarding punishment.

Further  
proceedings  
on charges  
against  
N.C.O.s and  
soldiers.

78.—(1) The following provisions of this section shall have effect where the commanding officer has investigated a charge against a non-commissioned officer or soldier.

(2) If—

- (a) the charge is not one which can be dealt with summarily and the commanding officer has not dismissed it, or
- (b) the charge is one which can be dealt with summarily but the commanding officer is of opinion that it should not be so dealt with,

he shall take the prescribed steps with a view to the charge being tried by court-martial.

(3) Otherwise, the commanding officer shall proceed to deal with the charge summarily; and if he records a finding of guilty he may award one or more of the following punishments, that is to say:—

- (a) if the accused is a soldier, detention for a period not exceeding twenty-eight days or, if the accused is on active service, field punishment for a period not exceeding twenty-eight days;
- (b) if the accused is a non-commissioned officer, severe reprimand or reprimand;
- (c) if the accused is a soldier and the offence was committed on active service, forfeiture of pay for a period beginning with the day of the sentence and not exceeding twenty-eight days;
- (d) where the accused is a soldier and the offence charged is drunkenness, a fine not exceeding two pounds;
- (e) where the offence has occasioned any expense, loss or damage, stoppages;
- (f) any minor punishment for the time being authorised by Queen's Regulations:

Provided that no forfeiture of pay or minor punishment shall be awarded for an offence for which detention is awarded.

(4) Where the accused is an acting warrant officer or non-commissioned officer, and the commanding officer finds him guilty, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the accused to revert to his permanent rank.

(5) Notwithstanding anything in subsection (3) of this section, where the commanding officer has determined that the accused is guilty and if the charge is dealt with summarily will award a punishment other than severe reprimand, reprimand or a minor punishment, or where a finding of guilty (whatever the punishment awarded) will involve a forfeiture of pay, the commanding officer shall not record a finding until after affording the accused an opportunity of electing to be tried by court-martial; and if the accused so elects and does not subsequently in accordance with Queen's Regulations withdraw his election, the commanding officer shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

(6) Where a charge is one which can be dealt with summarily, but the commanding officer has taken steps with a view to its being tried by court-martial, any higher authority to whom the charge is referred may refer the charge back to the commanding officer to be dealt with summarily; and on any such reference the three last foregoing subsections shall apply as if the commanding officer had originally been of opinion that the charge should be dealt with summarily:

Provided that a charge shall not be referred back where the accused has elected to be tried by court-martial and has not withdrawn his election.

**79.**—(1) After investigating a charge against an officer or warrant officer, the commanding officer shall, unless he has dismissed the charge, or the case is one where he has power, and proposes, to direct trial by field general court-martial, submit it in the prescribed manner to higher authority; and thereupon it shall be determined by such authority how the charge is to be proceeded with in accordance with the two next following subsections.

Further proceedings on charges against officers and warrant officers.

(2) If the charge is one which can be dealt with summarily, it may be referred to the appropriate superior authority.

(3) If the charge is not so referred, the prescribed steps shall be taken with a view to its being tried by court-martial.

(4) Where the charge is referred to the appropriate superior authority, that authority shall investigate the charge in the prescribed manner and determine whether the accused is

**PART II**  
—*cont.*

guilty of the charge and accordingly dismiss the charge or record a finding of guilty:

Provided that if in the course of investigating the charge the authority determines that it is desirable that the charge should be tried by court-martial, the prescribed steps shall be taken with a view to its being so tried.

(5) If the appropriate superior authority records a finding of guilty, the authority may award one or more of the following punishments, that is to say:—

- (a) forfeiture in the prescribed manner of seniority of rank, where the accused is an officer the forfeiture being of seniority of rank either in the army or in the corps to which the accused belongs or in both;
- (b) severe reprimand or reprimand;
- (c) where the offence has occasioned any expense, loss or damage, stoppages.

(6) Notwithstanding anything in subsection (4) of this section, where the appropriate superior authority has determined that the accused is guilty and if the charge is dealt with summarily will award forfeiture of seniority or stoppages, or where a finding of guilty will involve a forfeiture of pay, the authority shall not record a finding until after affording the accused an opportunity of electing to be tried by court-martial; and if the accused so elects the authority shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

Dismissal of  
charges  
referred to  
higher  
authority.

**80.**—(1) Notwithstanding anything in the two last foregoing sections, where a charge—

- (a) has been referred to higher authority with a view to its being tried by court-martial, or
- (b) has been submitted to higher authority for determination how it is to be proceeded with,

that authority may, subject to the provisions of this section, refer the charge back to the commanding officer of the accused with a direction that it shall be dismissed, and in any such case the commanding officer shall dismiss the charge.

(2) In a case falling within paragraph (a) of the last foregoing subsection, a charge shall not be referred back where the accused has elected to be tried by court-martial and has not withdrawn his election.

(3) The reference back of a charge in pursuance of this section shall be without prejudice to the preferring of another charge if the higher authority has so directed or the commanding officer thinks fit.

**81.**—(1) Where in accordance with Queen's Regulations a warrant officer, non-commissioned officer or soldier signs a written confession that he has been guilty of desertion, his commanding officer may, notwithstanding anything in the foregoing provisions of this Part of this Act, submit the confession for the consideration of the Army Council or such officer not below the rank of brigadier as may be provided by Queen's Regulations.

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—cont.

Confession of desertion by warrant officer, non-commissioned officer or soldier.

(2) After considering any such confession the Army Council or such officer as aforesaid may direct that the offence shall not be tried by court-martial or dealt with summarily by the appropriate superior authority or commanding officer, and if such a direction is given the period of his service as respects which he confesses to have been a deserter shall be forfeited.

(3) A direction under the last foregoing subsection may further provide that the whole or any part of the offender's service previous to that as respects which he confesses as aforesaid shall also be forfeited.

(4) Subsections (2) to (7) of section seventeen of this Act shall apply in relation to the forfeiture of service by virtue of this section subject to the following modifications:—

- (a) for references to an award of forfeiture of service by the court-martial there shall be substituted references to the direction;
- (b) for references to the date on which the offender was convicted there shall be substituted references to the date on which the direction was given.

**82.**—(1) In this Act the expression "commanding officer", in relation to a person charged with an offence, means such officer having powers of command over that person as may be determined by or under regulations of the Army Council.

Officers who are to act as commanding officers and appropriate superior authorities.

(2) The following persons may act as appropriate superior authority in relation to a person charged with an offence, that is to say, any general officer, flag officer, air officer or brigadier having power to convene general courts-martial or such other general officer, flag officer, air officer or brigadier as may be specified by or under regulations of the Army Council:

Provided that an officer under such rank as may be specified by regulations under this section shall not act as appropriate superior authority where the accused is above such rank as may be so specified.

(3) Regulations under this section may confer on officers, or any class of officers, who by or under the regulations are authorised to exercise the functions of commanding officer power to delegate those functions, in such cases and to such extent as may be specified in the regulations, to officers of a class so specified.



PART II  
—cont.

Limitation  
on powers  
of summary  
dealing with  
charges.

**83.**—(1) The charges which may be dealt with summarily by a commanding officer, and the charges which may be dealt with summarily by an appropriate superior authority, shall be such as may be specified by regulations of the Army Council.

(2) In such cases as may be specified in that behalf by regulations of the Army Council, the powers of a commanding officer or appropriate superior authority to award punishment shall be subject to such limitations as may be so specified.

*Courts-martial: general provisions*

Trial to be  
by general  
court-martial,  
district  
court-martial  
or in certain  
cases field  
general court-  
martial.

**84.**—(1) Subject to the provisions of this section, a charge which is to be tried by court-martial shall be tried either by general court-martial or by district court-martial.

(2) Where the officer commanding a body of the regular forces on active service—

- (a) being an officer (whether military, naval or air-force) to whom under subsection (1) of section seventy-nine of this Act a charge has been submitted for determining how it is to be dealt with, or
- (b) being the accused's commanding officer who has investigated a charge which cannot be dealt with summarily or which in his opinion ought not to be so dealt with, or
- (c) being the accused's commanding officer or the appropriate superior authority who has investigated a charge on which the accused has elected to be tried by court-martial,

is of opinion that it is not possible without serious detriment to the public service that the charge should be tried by a general or district court-martial, the officer may (whether or not he is authorised to convene general courts-martial) direct that the charge shall be tried by a field general court-martial.

Powers of  
different  
descriptions of  
court-martial.

**85.**—(1) A general court-martial shall have power to try any person subject to military law for any offence which under this Act is triable by court-martial, and to award for any such offence any punishment authorised by this Act for that offence.

(2) A district court-martial shall have the powers of a general court-martial except that it shall not try an officer or sentence a warrant officer to imprisonment, discharge with ignominy, dismissal or detention, and shall not award the punishment of death or of imprisonment for a term exceeding two years.

(3) A field general court-martial shall have the powers of a general court-martial, except that where the court consists of less than three officers the sentence shall not exceed imprisonment for a term of two years.

86.—(1) A general court-martial may be convened by any qualified officer authorised by Her Majesty by warrant under Her sign manual to convene general courts-martial or that court-martial, or by any qualified officer under the command of an officer authorised as aforesaid to whom the last-mentioned officer has, in the exercise of a power conferred by the warrant issued to him, delegated his power to convene general courts-martial.

PART II  
—cont.  
Officers having  
power to  
convene  
courts-martial.

(2) A district court-martial may be convened by an officer authorised to convene general courts-martial, by any person, not below the rank of captain, under the command of such an officer whom that officer has authorised to convene district courts-martial, by any general officer or brigadier commanding a body of troops or by any officer for the time being acting in the place of such a general officer or brigadier.

(3) A field general court-martial may be convened by the officer who directed that the charge should be tried by field general court-martial.

(4) Notwithstanding anything in subsection (1) or (2) of this section, any power to convene courts-martial delegated under subsection (1) of this section shall be exercisable only for the trial of a person who at the date of the convening order is under or within the territorial limits of the convening officer's command, and an officer, other than one authorised to convene general courts-martial, shall not by virtue of subsection (2) of this section convene a district court-martial except for the trial of a person under his command.

(5) In this section the expression "qualified officer" means any officer not below the rank of field officer or corresponding rank who—

- (a) is in command of a body of the regular forces, or
- (b) is in command of the command within which the person to be tried is serving.

(6) Any warrant under this section, or any authorisation under this section to convene courts-martial—

- (a) may be made subject to restrictions, reservations, exceptions or conditions ;
- (b) may be addressed to officers by name or by designation of their offices, and may be issued or given to a named or designated officer, to a named or designated officer and to the person for the time being performing the duties of his office, to a named or designated officer and his successors in that office or to a named or designated officer and such person and successors ;

PART II  
—cont.

(c) may be varied or may be revoked, either wholly or in part, by a subsequent warrant of Her Majesty or, as the case may be, by the officer by whom it was given or his successor in office.

(7) Where an officer on board ship—

(a) has had power to convene general courts-martial delegated to him by an officer under whose command he was before the departure of the ship, or

(b) has been authorised under subsection (2) of this section to convene district courts-martial by such an officer,

he may convene courts-martial to the like extent as if he had continued under the command of the officer delegating the power or granting the authorisation.

Constitution  
of general  
courts-martial.

**87.**—(1) A general court-martial shall consist of the president and not less than four other officers.

(2) Save as hereinafter provided, an officer shall not be appointed a member of a general court-martial unless he belongs to Her Majesty's military forces, is subject to military law and has held a commission in any of the armed forces of the Crown for a period of not less than three years or for periods amounting in the aggregate to not less than three years.

(3) Not less than four of the members of a general court-martial shall be of a rank not below that of captain.

(4) The president of a general court-martial shall be appointed by order of the convening officer and shall not be under the rank of field officer unless in the opinion of the convening officer a field officer having suitable qualifications is not, with due regard to the public service, available; and in any event the president of a general court-martial shall not be under the rank of captain.

(5) The members of a general court-martial, other than the president, shall be appointed by order of the convening officer or in such other manner as may be prescribed.

(6) An officer under the rank of captain shall not be a member of a general court-martial for the trial of an officer above that rank.

Constitution  
of district  
courts-martial.

**88.**—(1) A district court-martial shall consist of the president and not less than two other officers.

(2) Save as hereinafter provided, an officer shall not be appointed to be a member of a district court-martial unless he belongs to Her Majesty's military forces, is subject to military law and has held a commission in any of the armed forces of the Crown for a period of not less than two years or for periods amounting in the aggregate to not less than two years.

(3) The president of a district court-martial shall be appointed by order of the convening officer and shall not be under the rank of field officer unless in the opinion of the convening officer a field officer having suitable qualifications is not, with due regard to the public service, available; and in any event the president of a district court-martial shall not be under the rank of captain.

(4) The members of a district court-martial, other than the president, shall be appointed by order of the convening officer or in such other manner as may be prescribed.

**89.—**(1) A field general court-martial shall consist of the president and not less than two other officers, or, if the convening officer is of opinion that three officers having suitable qualifications are not available without serious detriment to the public service, shall consist of the president and one other officer. Constitution of field general courts-martial.

(2) Save as hereinafter provided, the members of a field general court-martial shall be persons belonging to Her Majesty's military forces and subject to military law.

(3) The president of a field general court-martial shall be an officer appointed by the convening officer and shall not be under the rank of captain.

(4) The members of a field general court-martial, other than the president, shall be appointed by order of the convening officer or in such other manner as may be prescribed.

**90.—**(1) The officer who convened a court-martial shall not be a member of that court-martial: Supplementary provisions as to constitution of courts-martial.

Provided that if in the case of a field general court-martial it is not practicable in the opinion of the convening officer to appoint another officer as president, he may himself be president of the court-martial.

(2) An officer who at any time between the date on which the accused was charged with the offence and the date of the trial has been the commanding officer of the accused, and any other officer who has investigated the charge against the accused, or who under this Act has held, or has acted as one of the persons holding, an inquiry into matters relating to the subject matter of the charge against the accused, shall not sit as a member of a general or district court-martial or act as judge advocate at such a court-martial.

(3) If any court-martial is required to be convened at any place where in the opinion of the convening officer the necessary number of military officers having suitable qualifications is not available to form the court, and cannot be made available with due regard to the public service, the convening officer may, with

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—*cont.*

the consent of the proper naval or air-force authority, appoint any naval or air-force officer as president in lieu of a military officer or as any other member of the court in lieu of or in addition to a military officer or military officers :

Provided that no naval or air-force officer shall be qualified to act in relation to a court-martial unless he is of corresponding rank to that which would have been required in the case of a military officer and has held a commission in any of the armed forces of the Crown for the like period or periods as would have been so required.

(4) Where—

- (a) the officer convening a general or district court-martial appoints a captain to be president, being of opinion that a field officer having suitable qualifications is not with due regard to the public service available ;
- (b) an officer directs that an offender shall be tried by a field general court-martial, being of opinion that it is not possible without serious detriment to the public service that the offender should be tried by a general or district court-martial, or the officer convening a field general court-martial appoints two officers only to be members of the court, being of opinion that three officers having suitable qualifications are not without serious detriment to the public service available, or appoints himself to be president, being of opinion that it is not practicable to appoint another officer as president, or
- (c) the officer convening any court-martial appoints an officer not being a military officer as president or any other member of the court, being of opinion that the necessary number of military officers having suitable qualifications is not available to form the court and cannot be made available with due regard to the public service,

the order convening the court-martial shall contain a statement of the said opinion, and that statement shall be conclusive.

(5) In this section the expression “ military officer ” means an officer belonging to Her Majesty’s military forces and subject to military law.

Place for  
sitting of  
courts-martial  
and  
adjournment  
to other  
places.

**91.**—(1) Subject to the provisions of this section, a court-martial shall sit at such place (whether within or without Her Majesty’s dominions) as may be specified in the order convening the court ; and the convening officer may convene it to sit at a place outside the limits of his command.

(2) A court-martial sitting at any place shall if the convening officer directs it to sit at some other place, and may without any such direction if it appears to the court requisite in the interests of justice to sit at some other place, adjourn for the purpose of sitting at that other place.

PART II  
—cont.

*Courts-martial: provisions relating to trial*

92.—(1) An accused about to be tried by any court-martial shall be entitled to object, on any reasonable grounds, to any member of the court, whether appointed originally or in lieu of another officer. Challenges  
by accused.

(2) For the purpose of enabling the accused to avail himself of the right conferred by the last foregoing subsection, the names of the members of the court shall be read over in the presence of the accused before they are sworn, and he shall be asked whether he objects to any of those officers.

(3) Every objection made by an accused to any officer shall be considered by the other officers appointed members of the court.

(4) If objection is made to the president and not less than one-third of the other members of the court allow it, the court shall adjourn and the convening officer shall appoint another president.

(5) If objection is made to a member of the court other than the president and not less than one-half of the members entitled to vote allow it, the member objected to shall retire and the vacancy may, and if otherwise the number of members would be reduced below the legal minimum shall, be filled in the prescribed manner by another officer.

93.—(1) An oath shall be administered to every member of a court-martial and to any person in attendance on a court-martial as judge advocate, officer under instruction, shorthand writer or interpreter. Administration  
of oaths.

(2) Every witness before a court-martial shall be examined on oath:

Provided that where any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if in the opinion of the court he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, so however that where the evidence is given on behalf of the prosecution the accused shall not be liable to be convicted unless it is corroborated by some other material evidence in support thereof implicating the accused.

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—cont.

(3) An oath required to be administered under this section shall be in the prescribed form and shall be administered at the prescribed time by the prescribed person and in the prescribed manner.

Courts-martial  
to sit in open  
court.

**94.**—(1) Subject to the provisions of this section, a court-martial shall sit in open court and in the presence of the accused.

(2) Nothing in the last foregoing subsection shall affect the power of a court-martial to sit in camera on the ground that it is necessary or expedient in the interests of the administration of justice to do so; and without prejudice to that power a court-martial may order that, subject to any exceptions the court may specify, the public shall be excluded from all or any part of the proceedings of the court if it appears to the court that any evidence to be given or statement to be made in the course of the proceedings or that part, as the case may be, might otherwise lead to the disclosure of any information which would or might be directly or indirectly useful to an enemy.

(3) A court-martial shall sit in closed court while deliberating on their finding or sentence on any charge.

(4) A court-martial may sit in closed court on any other deliberation amongst the members.

(5) Where a court-martial sits in closed court no person shall be present except the members of the court and such other persons as may be prescribed.

Dissolution of  
courts-martial.

**95.**—(1) Where, whether before or after the commencement of the trial, it appears to the convening officer necessary or expedient in the interests of the administration of justice that a court-martial should be dissolved, the convening officer may by order dissolve the court-martial.

(2) Without prejudice to the generality of the last foregoing subsection, if after the commencement of the trial a court-martial is, by reason of the death of one of the members or for any other reason, reduced below the legal minimum, it shall be dissolved.

(3) If after the commencement of the trial the president dies or is otherwise unable to attend and the court is not reduced below the legal minimum, then—

(a) if the senior member of the court is of the rank of captain or corresponding rank or is of higher rank, the convening officer may appoint him president and the trial shall proceed accordingly; but

(b) if he is not, the court shall be dissolved.



(4) Without prejudice to the generality of subsection (1) of this section, if after the commencement of the trial it is represented to the convening officer that owing to the sickness or other incapacity of the accused it is impracticable having regard to all the circumstances to continue the trial within a reasonable time, the convening officer may dissolve the court.

(5) Where a court-martial is dissolved under the foregoing provisions of this section the accused may be tried by another court.

96.—(1) Subject to the provisions of this section, every question to be determined on a trial by court-martial shall be determined by a majority of the votes of the members of the court. Decisions of courts-martial.

(2) In the case of an equality of votes on the finding, the court shall acquit the accused.

(3) A finding of guilty where the only punishment which the court can award is death shall not have effect unless it is reached with the concurrence of all the members of the court; and where on such a finding being come to by a majority of the members there is no such concurrence, the court shall be dissolved and the accused may be tried by another court.

(4) Where the accused is found guilty and the court has power to sentence him either to death or to some less punishment, sentence of death shall not be passed without the concurrence of all the members of the court.

(5) In the case of an equality of votes on the sentence, or on any question arising after the commencement of a trial, except the finding, the president shall have a second or casting vote.

97.—(1) Without prejudice to the provisions of section ninety-four of this Act, the finding of a court-martial on each charge shall be announced in open court. Finding and sentence.

(2) Any finding of guilty shall be, and be announced as being, subject to confirmation.

(3) Any sentence of a court-martial, together with any recommendation to mercy, shall be announced in open court, and a sentence of a court-martial shall be, and be announced as being, subject to confirmation.

98.—(1) An accused charged before a court-martial with an offence under this Act may, on failure of proof of the offence having been committed under circumstances involving a higher degree of punishment, be found guilty of the offence as having been committed under circumstances involving a less degree of punishment. Power to convict of offence other than that charged.

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—cont.

(2) An accused charged before a court-martial with any offence may be found guilty of attempting to commit that offence.

(3) An accused charged before a court-martial with attempting to commit an offence may be convicted on that charge notwithstanding that it is proved that he actually committed the offence.

(4) Where an accused is charged before a court-martial under section seventy of this Act in respect of attempting to commit a civil offence, he may be convicted on that charge notwithstanding that it is proved that he actually committed the civil offence.

(5) Where an accused is charged before a court-martial with an offence against section seventy of this Act, and the corresponding civil offence is one in proceedings for which, if he had been tried by a civil court for committing the offence in England, he might have been found guilty of another civil offence, then if the court finds that he has committed that other civil offence he may be convicted of an offence against section seventy of this Act in respect of the commission of that other civil offence.

(6) An accused charged before a court-martial with an offence specified in the first column of the Third Schedule to this Act may be found guilty of an offence specified in relation thereto in the second column of that Schedule.

Rules of  
evidence.

**99.**—(1) The rules as to the admissibility of evidence to be observed in proceedings before courts-martial shall be the same as those observed in civil courts in England, and no person shall be required in proceedings before a court-martial to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court in England.

(2) Notwithstanding anything in the last foregoing subsection, a statutory declaration shall, in a trial by court-martial, be admissible as evidence of the facts stated in the declaration in a case where, and to the extent to which, oral evidence to the like effect would be admissible in that trial:

Provided that a statutory declaration shall not be admitted in evidence in any such trial on behalf either of the prosecution or of the defence—

- (a) where the declaration is put forward on behalf of the prosecution, unless a copy of the declaration has, not less than seven days before the commencement of the trial, been served on the accused;
- (b) where the declaration is put forward on behalf of the defence, unless a copy of the declaration has, not less than seven days before the commencement of the trial, been served on the commanding officer of the accused;

(c) in any case, if, not later than three days before the commencement of the trial or within such further time as the court-martial may in special circumstances allow, the accused or, as the case may be, the commanding officer of the accused serves a notice in the prescribed form on the commanding officer or accused requiring that oral evidence shall be given in lieu of the declaration;

(d) in any case, if the court-martial is of opinion that it is desirable in the interests of justice that oral evidence should be given in lieu of the declaration and declares that it is of that opinion.

(3) A court-martial shall take judicial notice of all matters of notoriety, including all matters within the general service knowledge of the court, and of all other matters of which judicial notice would be taken in a civil court in England.

**100.** A witness before a court-martial or any other person whose duty it is to attend on or before the court shall be entitled to the same immunities and privileges as a witness before the High Court in England. Privilege of witnesses and others at courts-martial

**101.** Where in the United Kingdom or in any colony any person not subject to military law— Offences by civilians in relation to courts-martial.

(a) having been duly summoned to attend as a witness before a court-martial, fails to comply with the summons, or

(b) refuses to swear an oath when duly required by a court-martial to do so, or

(c) refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to produce, or

(d) when a witness, refuses to answer any question which a court-martial has lawfully required him to answer, or

(e) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court, or

(f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court, or

(g) does any other thing which would, if the court-martial had been a court of law having power to commit for contempt, have been contempt of that court,

the president of the court-martial may certify the offence of that person under his hand to any court of law in the part of the United Kingdom or in the colony, as the case may be, where the

**PART II**  
—cont.

offence is alleged to have been committed, being a court having power to commit for contempt, and that court of law may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court to which the offence is certified:

Provided that where the offence is alleged to have been committed in the United Kingdom and the court-martial was held outside the United Kingdom, the certifying of the offence may be done by the Army Council or any officer authorised by them.

**Affirmations.**

**102. If—**

- (a) a person required by virtue of this Act to take an oath for the purposes of proceedings before a court-martial objects to being sworn, and states as the ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief, or
- (b) it is not reasonably practicable to administer an oath to such a person as aforesaid in the manner appropriate to his religious belief,

he shall be permitted to make a solemn affirmation in the prescribed form instead of taking an oath.

*Offences: procedure*

**Rules of  
Procedure.**

**103.—**(1) Subject to the provisions of this section, the Secretary of State may make rules (hereinafter referred to as Rules of Procedure) with respect to the investigation and trial of, and awarding of punishment for, offences cognizable by courts-martial, commanding officers and appropriate superior authorities and with respect to the confirmation and revision of findings and sentences of courts-martial.

(2) Without prejudice to the generality of the last foregoing subsection, Rules of Procedure may make provision with respect to all or any of the following matters, that is to say—

- (a) the procedure to be observed in the bringing of charges before commanding officers and appropriate superior authorities;
- (b) the manner in which charges so brought are to be investigated, and the taking of evidence (whether orally or in writing, whether or not on oath and whether in full or in summary or abstract form) for the purpose

of investigating or dealing summarily with such charges or otherwise as a preliminary to the trial thereof by court-martial, so however that the Rules shall make provision for the application of section ninety-three of this Act in any case where the accused requires that evidence shall be taken on oath ;

- (c) the addition to, or substitution for, a charge which has been investigated of a new charge for an offence disclosed by evidence taken on the investigation and the treating of the investigation as the investigation of the new charge ;
- (d) the convening and constitution of courts-martial ;
- (e) the sittings, adjournment and dissolution of courts-martial ;
- (f) the procedure to be observed in trials by court-martial ;
- (g) the representation of the accused at such trials ;
- (h) procuring the attendance of witnesses before courts-martial and at the taking of evidence in pursuance of rules made under paragraph (b) of this subsection ;
- (i) applying in relation to proceedings before commanding officers and appropriate superior authorities and otherwise in relation to proceedings prior to trial by court-martial all or any of the provisions of the four last foregoing sections ;
- (j) empowering a court-martial or the convening officer, in such cases and to such extent as may be prescribed, to amend a charge which is being tried by the court ;
- (k) empowering a court-martial, where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, to make a finding of guilty subject to exceptions or variations specified in the finding if it appears to the court that the difference is not so material as to have prejudiced the accused in his defence ;
- (l) the forms of orders and other documents to be made for the purposes of any provision of this Act or the Rules relating to the investigation or trial of, or award of punishment for, offences cognizable by courts-martial, commanding officers or appropriate superior authorities or to the confirmation and revision of the findings and sentences of courts-martial ; and
- (m) any matter which by this Part of this Act is required or authorised to be prescribed.

**PART II**  
—*cont.*

(3) Rules made by virtue of paragraph (j) of the last foregoing subsection shall secure that the power to amend charges shall not be exercisable in circumstances substantially different from those in which indictments are amendable by a civil court in England, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which indictments are so amendable, and shall not be exercisable by a court-martial (otherwise than for the purpose only of correcting a mistake in the name or description of the accused or a clerical error or omission) unless there is a judge advocate present at the trial.

(4) Rules of Procedure shall not make provision with respect to the carrying out of sentences passed by courts-martial or of other punishments awarded under this Part of this Act.

(5) A Rule of Procedure which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.

Rules as to  
exercise of  
functions of  
judge advocate.

**104.**—(1) Rules of Procedure may make provision as to the exercise by a judge advocate of his functions at a trial by court-martial.

(2) Without prejudice to the generality of the foregoing provisions of this section, Rules of Procedure may make provision—

(a) as to the effect of advice or rulings given to the court by a judge advocate on questions of law ;

(b) for requiring or authorising the president of a court-martial, in such cases as may be specified in the Rules, to direct that questions of law shall be determined by a judge advocate in the absence of the president and other members of the court and any officers under instruction, and for applying to the judge advocate and his proceedings on any such determination such of the provisions of this Act relating to the court or its members and the proceedings thereof as may be specified in the Rules.

(3) In the last foregoing subsection references to questions of law include references to questions as to the joinder of charges and as to the trial of persons jointly or separately.

Taking of  
offences into  
consideration.

**105.**—(1) Rules of Procedure may be made for determining the cases in which and the extent to which courts-martial may, in sentencing an accused for any offence of which he is convicted, at the request of the accused take into consideration other offences against this Act committed by him.

(2) Where Rules of Procedure make such provision as aforesaid, they may also make provision for conferring on the court taking one or more offences into consideration power to direct the making of such deductions from the offender's pay as the court would have had power to direct if he had been found guilty of the offence or offences taken into consideration as well as of the offence of which he was in fact found guilty.

PART II  
—cont.

**106.** The power to make Rules of Procedure shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament. Rules of Procedure to be subject to annulment.

*Confirmation, revision and review of proceedings of courts-martial*

**107.**—(1) Where a court-martial finds the accused guilty on any charge, the record of the proceedings of the court-martial shall be transmitted to a confirming officer for confirmation of the finding and sentence of the court on that charge. Confirmation of proceedings of courts-martial.

(2) A finding of guilty or sentence of a court-martial shall not be treated as a finding or sentence of the court until confirmed:

Provided that this subsection shall not affect the keeping of the accused in custody pending confirmation or the operation of the two next following sections or the provisions of this Act as to confirmation or approval.

**108.** At any time after a court-martial has sentenced the accused, but not later than the prescribed time after confirmation is completed, the accused may in the prescribed manner present a petition against finding or sentence or both. Petitions against finding or sentence.

**109.**—(1) A confirming officer may direct that a court-martial shall revise any finding of guilty come to by the court in any case where it appears to him— Revision of findings of courts-martial.

(a) that the finding was against the weight of evidence, or

(b) that some question of law determined at the trial and relevant to the finding was wrongly determined.

(2) Any such direction shall be accompanied by the necessary directions for the re-assembly of the court, and shall contain a statement of the reasons for the direction.

(3) On any revision of a finding the court shall reconsider the finding, and (unless the court adheres thereto) may substitute therefor either a finding of not guilty or any other finding to which the court could originally have come at the trial in lieu of the finding under revision.

(4) On any such revision the court shall not have power to receive further evidence.

(5) Where on any such revision the court either adheres to the original finding or substitutes therefor a finding of guilty of another offence, or of the same offence in different circumstances, the court may substitute a different sentence for the original sentence:

Provided that the court shall not have power to substitute a sentence of a punishment greater than the punishment or greatest



PART II  
—cont.

of the punishments awarded by the original sentence, or to substitute a sentence which in the opinion of the court is more severe than the original sentence.

(6) The confirming officer shall not have power to direct the revision of any substituted finding come to by the court on a previous direction of the confirming officer, or the revision of the original finding if adhered to by the court on such a previous direction; but save as aforesaid this Act shall apply to the proceedings of the court on any such revision as it applies to their deliberations on the original finding or sentence, and any substituted finding or sentence shall be treated for all purposes as an original finding or sentence of the court:

Provided that the decision of the court on the revision shall not be required to be announced in open court.

Powers of  
confirming  
officers.

**110.**—(1) Subject to the provisions of the last foregoing section and to the following provisions of this section, a confirming officer shall deal with the finding or sentence of a court-martial either by withholding confirmation, if of opinion that the finding of the court is unreasonable or cannot be supported having regard to the evidence or involves a wrong decision on a question of law or that, on any ground, there was a miscarriage of justice, or by confirming the finding or sentence or referring the finding or sentence, or both, for confirmation to a higher confirming officer.

(2) In lieu of withholding confirmation of the finding of a court-martial, a confirming officer may, if—

- (a) some other finding of guilty could have been validly made by the court-martial on the charge before it, and
- (b) he is of opinion that the court-martial must have been satisfied of the facts necessary to justify that other finding,

substitute that other finding, and if he does so he shall consider in what manner, if at all, the powers conferred by subsection (4) of this section should be exercised.

(3) Where it appears to a confirming officer that a sentence of a court-martial is invalid, he may in lieu of withholding confirmation of the sentence substitute therefor a sentence of any punishment or punishments which could have been awarded by the court, not being greater than the punishment or greatest of the punishments awarded by the court and not in his opinion more severe than that punishment or those punishments.

(4) In confirming the sentence of a court-martial, a confirming officer may—

- (a) remit in whole or in part any punishment awarded by the court ; or
- (b) commute any such punishment for one or more punishment or punishments provided by this Act, being less than the punishment commuted.

(5) In confirming any sentence, a confirming officer may postpone the carrying out of the sentence for such time as seems expedient, and a confirming officer may extend or terminate any postponement ordered under this subsection.

(6) A finding or sentence substituted by the confirming officer, or any sentence having effect after the confirming officer has remitted or commuted punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.

(7) The confirmation of a finding or sentence shall not be deemed to be completed until the finding or sentence has been promulgated ; and in the event of any such substitution, remission or commutation as aforesaid the finding or sentence shall be promulgated as it has effect after the substitution, remission or commutation.

(8) Where the confirming officer determines to withhold confirmation, the determination shall be promulgated and shall have effect as from the promulgation thereof.

**111.**—(1) Subject to the provisions of this section, the Confirming following shall have power to confirm the finding and sentence officers. of any court-martial, that is to say :—

- (a) the officer who convened the court-martial or any officer superior in command to that officer ;
- (b) the successor of any such officer or superior officer, or any person for the time being exercising the functions of any such officer or superior officer ;
- (c) failing any such officer as aforesaid, any officer appointed by the Army Council to act as confirming officer, whether for the particular case or for a specified class of cases.

(2) The following shall not have power to confirm the finding or sentence of a court-martial, that is to say :—

- (a) any officer who was a member of the court-martial, or
- (b) any person who as commanding officer of the accused investigated the allegations against him or who is for the time being the commanding officer of the accused, or
- (c) any person who as appropriate superior authority investigated the allegations against the accused :

PART II  
—cont.

Provided that a person excluded by the foregoing provisions of this subsection may act as confirming officer for a field general court-martial, if otherwise having power to do so, where he is of opinion that it is not practicable, having due regard to the public service, to delay the case for the purpose of referring it to another confirming officer.

(3) A warrant or authorisation empowering the convening of a general or district court-martial may reserve for confirmation by superior authority findings or sentences or both in such circumstances as may be specified by or under the warrant or authorisation, and the powers conferred by subsection (1) of this section shall be exercisable subject to any such reservation.

(4) Where a person is found guilty by a court-martial held on board any ship and is disembarked before the finding or sentence has been confirmed it may be confirmed by any officer under, or in the area of, whose command he is for the time being, being an officer having power to confirm courts-martial of the like description as that held on board the ship.

Approval as well as confirmation required for certain death sentences.

**112.**—(1) A sentence of death confirmed by an officer below the rank of general officer shall not be carried into effect unless approved by a general officer or by a naval or air-force officer of corresponding rank, being a naval or air-force officer commanding the command in which the person under sentence was serving at the date of the sentence.

(2) Without prejudice to the provisions of the last foregoing subsection, a sentence of death passed by a court-martial shall not be carried into effect in a colony unless approved by the Governor of the colony.

(3) Notwithstanding anything in the foregoing provisions of this section, sentence of death passed on a person on active service may be carried out without such approval as is mentioned in subsection (1) or subsection (2) of this section where in the opinion of the confirming officer it is essential in the interests of discipline and for the purpose of securing the safety of the force with which the person sentenced is present that the sentence should be carried out forthwith, and the confirming officer states that opinion in the minute confirming the sentence.

Review of findings and sentences of courts-martial.

**113.**—(1) A finding or sentence which has been confirmed may at any time be reviewed by a reviewing authority, and if after confirmation of a finding or sentence a petition is duly presented under section one hundred and eight of this Act against the finding or sentence then, subject to the provisions of this section, the finding or sentence shall be so reviewed as soon as may be after the presentation of the petition and after consideration of the matters alleged therein.

(2) The reviewing authorities for the purposes of this Act are the following:—

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—cont.

- (a) Her Majesty,
- (b) the Army Council, or (so far as the delegation extends) any officer to whom the powers of the Army Council as reviewing authority, or any of those powers, may be delegated by, or by regulations of, the Army Council,
- (c) any officer superior in command to the confirming officer.

(3) If an application for leave to appeal is received by the registrar of the Courts-Martial Appeal Court or the said registrar receives particulars of such an application furnished in pursuance of paragraph (b) of subsection (3) of section four of the Courts-Martial (Appeals) Act, 1951, so much of subsection (1) of this section as requires the review of a finding or sentence against which a petition has been presented shall thereupon cease to apply to the finding to which the application for leave to appeal relates and the sentence passed in consequence of that finding.

(4) Notwithstanding anything in subsection (1) of this section, a sentence of death passed on a person on active service and the finding of guilty in consequence of which it was passed shall not be required to be reviewed if in the opinion of the confirming officer it is essential in the interests of discipline and for the purpose of securing the safety of the force with which the person sentenced is present that the sentence should be carried out forthwith, and the confirming officer states that opinion in the minute confirming the sentence.

(5) On a review under this section the reviewing authority may—

- (a) in so far as the review is of a finding, quash the finding and, if the sentence relates only to the finding quashed, the sentence;
- (b) in so far as the review is of a sentence, quash the sentence;
- (c) in any case, exercise the like powers of substituting findings, substituting valid for invalid sentences and remitting or commuting punishment as are conferred on a confirming officer by subsections (2) to (4) of section one hundred and ten of this Act;

and any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.

PART II  
—cont.

(6) Where a reviewing authority exercises any of the powers conferred by the last foregoing subsection, the determination of the authority shall be promulgated and shall have effect as from the promulgation thereof.

## Reconsideration of sentences of imprisonment and detention.

114.—(1) Sentences of imprisonment and detention may be reconsidered by such officers (not below the rank of brigadier or corresponding naval or air-force rank) as may be specified by regulations of the Army Council; and if on any such reconsideration it appears that the conduct of the offender since his conviction has been such as to justify remission of the sentence, whether in whole or in part, it shall be remitted accordingly.

(2) The power to reconsider a sentence may be exercised at any time after confirmation, and where after the review of a sentence it is effective it shall be reconsidered not less frequently than at such intervals as may be specified by regulations of the Army Council:

Provided that delay in complying with this subsection shall not invalidate the sentence.

*Review of summary findings and awards*

## Review of summary findings and awards.

115.—(1) Where a charge has been dealt with summarily, otherwise than by the dismissal thereof, the authority hereinafter mentioned may at any time review the finding or award.

(2) The said authority is—

(a) the Army Council, or

(b) any military, naval or air-force officer superior in command to the officer who dealt summarily with the charge, or

(c) any other officer being—

(i) a general officer or brigadier appointed by the Army Council to act for the purposes of this section in any particular case, or

(ii) a general officer or brigadier, or general officer or brigadier of a class, so appointed for any class of cases.

(3) Where on a review under this section it appears to the said authority expedient so to do by reason of any mistake of law in the proceedings on the summary dealing with the charge or of anything occurring in those proceedings which in

the opinion of the authority involved substantial injustice to the accused, the authority may quash the finding; and if the finding is quashed the authority shall also quash the award.

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—cont.

(4) Where on a review under this section it appears to the said authority that a punishment awarded was invalid, or too severe, or (where the award included two or more punishments) that those punishments or some of them could not validly have been awarded in combination or are, taken together, too severe, the authority may vary the award by substituting such punishment or punishments as the authority may think proper, being a punishment or punishments which could have been included in the original award and not being in the opinion of the authority more severe than the punishment or punishments included in the original award.

### *Findings of insanity*

116.—(1) Where, on the trial of a person by court-martial, it appears to the court that the accused is by reason of insanity unfit to stand his trial, the court shall so find; and if the finding is confirmed in accordance with the following provisions of this section the accused shall be kept in custody in such manner as may be provided by or under regulations of the Army Council until the directions of Her Majesty are known or until any earlier time at which the accused is fit to stand his trial.

Provisions  
where accused  
found insane.

(2) Where, on the trial of a person by court-martial, it appears to the court that the evidence is such as, apart from any question of insanity, to support a finding that the accused was guilty of any offence, but that at the time of the acts or omissions constituting that offence the accused was insane, the court shall find that the accused was guilty of that offence but was insane at the said time, and thereupon the accused shall be kept in custody in such manner as may be provided by or under regulations of the Army Council until the directions of Her Majesty are known.

(3) In the case of any such finding as aforesaid Her Majesty may give orders for the safe custody of the accused during Her pleasure in such place and in such manner as Her Majesty thinks fit.

(4) A finding under subsection (1) of this section shall not have effect unless and until the finding has been confirmed by an officer who would have had power to confirm a finding of guilty come to by the court-martial in question and has been promulgated.

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—cont.

(5) Where the court or the confirming officer comes to or substitutes a finding of guilty but insane the confirming officer or, as the case may be, the reviewing authority shall not have power to substitute for that finding a finding of guilty; but save as aforesaid the provisions of this Act as to revision, confirmation and review (and in particular the provisions of this Act which confer power to substitute for any finding any other finding which could have been come to by the court-martial in question) apply in relation to such findings as are provided for by subsection (2) of this section as those provisions apply in relation to other findings of guilty.

*Saving for functions of Judge Advocate General*

Saving for  
functions of  
Judge  
Advocate  
General.

**117.** Nothing in the foregoing provisions of this Part of this Act shall prejudice the exercise of the functions conferred (whether by Queen's Regulations or otherwise) on the Judge Advocate General of considering and reporting on the proceedings of courts-martial or any other functions so conferred on him in relation to such courts.

*Commencement, suspension and duration of sentences*

Commence-  
ment of  
sentences.

**118.**—(1) A military sentence of imprisonment or detention or a sentence of field punishment shall, subject to the provisions of this section and of subsection (7) of section four of the Courts-Martial (Appeals) Act, 1951 (which empowers the Court in certain cases to direct that a sentence shall begin to run from the day on which the Court dismisses an application for leave to appeal), begin to run from the beginning of the day on which sentence was originally pronounced by the court-martial trying the offender or, as the case may be, was originally awarded by his commanding officer.

(2) A sentence of imprisonment or detention passed by a court-martial on a warrant officer, non-commissioned officer or soldier which is suspended in pursuance of section one hundred and twenty of this Act before he has been committed to prison or a military establishment shall not begin to run until the beginning of the day on which the suspension is determined:

Provided that where the sentence is suspended by the confirming officer and the reviewing authority determines the suspension, the reviewing authority may direct that the sentence shall run from such earlier date, not earlier than the day on which sentence was originally pronounced by the court-martial, as the reviewing authority may specify.

Duration of  
sentences of  
imprisonment  
and  
detention.

**119.**—(1) Where a warrant officer, non-commissioned officer or soldier has been sentenced to imprisonment or detention by a court-martial, and the sentence is suspended in pursuance of



the next following section after he has been committed to prison or a military establishment, the currency of the sentence shall be suspended from the beginning of the day after the day on which he is released in accordance with the provisions of the next following section until the beginning of the day on which the suspension is determined.

(2) Where any person serving a military sentence of imprisonment or detention becomes unlawfully at large during the currency of the sentence, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day on which he became at large and ending with the day on which, as a person having become unlawfully at large, he is taken into naval, military or air force custody or the custody of a civil authority or (not having been taken into such custody) returns to the place in which he was imprisoned or detained before he became unlawfully at large:

Provided that if he satisfies such authority as may be specified in that behalf by or under Imprisonment and Detention Rules that during any time during the last-mentioned period he was—

- (a) in the custody of a civil authority, or
- (b) if and in so far as Imprisonment and Detention Rules so provide, in the custody of any military, naval or air-force authority of any country or territory outside the United Kingdom as respects which arrangements have been made under section one hundred and twenty-six of this Act,

the last-mentioned time shall not be disregarded in calculating the period for which he is liable to be imprisoned or detained in pursuance of the military sentence.

(3) In the last foregoing subsection the expression “civil authority” means a civil authority (whether of the United Kingdom or of any country or territory outside the United Kingdom) authorised by law to detain persons, and includes a constable.

(4) Without prejudice to subsection (2) of this section, where any person serving a military sentence of imprisonment or detention has in accordance with Imprisonment and Detention Rules been temporarily released on compassionate grounds, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day after that on which he is released and ending with the day on which he is required to return to custody.

**PART II**  
**—cont.**

(5) A person who for any period is released as mentioned in the last foregoing subsection or who is otherwise allowed, in pursuance of Imprisonment and Detention Rules, out of any military establishment or otherwise out of military custody for any period or subject to any condition shall, on failure to return at the expiration of the period or to comply with the condition, be treated for the purposes of subsection (2) of this section as being unlawfully at large.

(6) A person serving a military sentence of imprisonment or detention in civil custody who, after being temporarily released under civil law, is at large at any time during the period for which he is liable to be detained in civil custody in pursuance of his sentence shall be deemed to be unlawfully at large if the period for which he was temporarily released has expired or if an order recalling him has been made in pursuance of civil law.

(7) References in the last foregoing subsection to release or recall under civil law are references to release or recall in pursuance of rules made under subsection (5) of section forty-seven of the Prison Act, 1952, subsection (6) of section thirty-five of the Prisons (Scotland) Act, 1952, or paragraph (c) of subsection (1) of section thirteen of the Prisons Act (Northern Ireland) 1953, or (in the case of a person serving his sentence outside the United Kingdom) in pursuance of any corresponding provision of the law of the country or territory in which he is serving his sentence.

**Suspension  
of sentences.**

**120.**—(1) The following provisions of this section shall have effect as respects the suspension of a sentence of imprisonment or detention passed by a court-martial on a warrant officer, non-commissioned officer or soldier.

(2) Without prejudice to subsection (5) of section one hundred and ten of this Act, in confirming such a sentence the confirming officer may order that the sentence shall be suspended.

(3) Any such sentence which is not for the time being suspended may, on the review or reconsideration of the sentence, be suspended by order of the authority reviewing or reconsidering the sentence.

(4) The suspension of any such sentence may (without prejudice to its again being suspended) be determined on the review or reconsideration of the sentence by an order of the said authority committing the person sentenced to imprisonment or detention, as the case may be.

(5) Where, while any such sentence is suspended, the person sentenced is sentenced by court-martial to imprisonment or detention for a fresh offence then (unless the balance of the

earlier sentence is remitted by virtue of subsection (10) of section seventy-two of this Act)—

- (a) the court may determine the suspension of the earlier sentence by an order committing the person sentenced to imprisonment or detention, as the case may be, and if so the court shall direct whether the two sentences are to run concurrently or consecutively ;
- (b) if the court does not exercise the powers conferred by the last foregoing paragraph, the confirming officer may exercise those powers on the confirmation of the later sentence ;
- (c) if neither the court nor the confirming officer exercises the said powers, a reviewing authority may exercise those powers on the review of the later sentence ;
- (d) where the said powers are exercised (whether by the court, the confirming officer or a reviewing authority), any power of suspension or remission exercisable in relation to the later sentence shall be exercisable also in relation to the earlier sentence :

Provided that this subsection has effect subject to the provisions of subsection (11) of section seventy-two of this Act.

(6) Without prejudice to the further suspension of the earlier sentence, an order under the last foregoing subsection directing that the suspension of that sentence shall be determined shall not be affected by the later sentence not being confirmed or by its being quashed.

(7) Where the sentence of a person in custody is suspended, he shall thereupon be released.

(8) The maximum intervals for the reconsideration, under subsection (2) of section one hundred and fourteen of this Act, of a sentence of imprisonment or detention which is suspended shall be three months, and not those specified under the said subsection.

### *Execution of sentences of death, imprisonment and detention*

**121.**—(1) The Secretary of State may make regulations with respect to the execution of sentences of death under this Act, whether passed in the United Kingdom or elsewhere. Execution of sentences of death.

(2) Without prejudice to the generality of the last foregoing subsection regulations under this section may make provision with respect to all or any of the following matters, that is to say—

- (a) the manner in which, the person by whom and the country or territory, place and kind of establishment (whether military or not) where any such sentence is to be executed ; and

PART II  
—cont.

- (b) the custody and treatment of the person under sentence and his removal from one place or establishment to another between the passing and execution of the sentence,

or may authorise such persons as may be specified in or determined by or under the regulations to give directions with respect to all or any of those matters.

(3) Such provost marshal or other provost officer not below field rank as may be specified in or determined under regulations under this section shall be responsible for the due execution of any sentence of death passed under this Act.

Imprisonment  
and Detention  
Rules.

**122.**—(1) Subject to the provisions of this Act, the Secretary of State may make rules (in this Part of this Act referred to as Imprisonment and Detention Rules) with respect to all or any of the following matters, that is to say—

- (a) the places in which and the establishments or forms of custody (whether military or not) in which persons may be required to serve the whole or any part of military sentences of imprisonment and detention passed on them ;
- (b) the committal of persons under military sentences of imprisonment or detention to the appropriate establishment or form of custody, their removal from one country or place to another and from one establishment or form of custody to another and their release on the coming to an end of any term of imprisonment or detention ;
- (c) the provision, classification, regulation and management of military establishments ;
- (d) the classification, treatment, employment, discipline and control of persons serving military sentences of imprisonment or detention in military establishments or otherwise in military custody ;
- (e) the temporary release on compassionate grounds of persons serving such sentences in such establishments or custody as aforesaid, the cases in which, periods for which and conditions subject to which they may be allowed out of any such establishment or custody and the remission of part of any such sentence for good conduct and industry ;
- (f) the appointment, powers and duties of inspectors, visitors and governors, and of officers and other members of the staff, of military establishments.

(2) Imprisonment and Detention Rules shall not authorise the infliction of corporal punishment.

(3) Imprisonment and Detention Rules may apply with the necessary modifications all or any of the provisions of sections thirty-nine to forty-two of the Prison Act, 1952 (which relate to offences by persons other than prisoners).

(4) Imprisonment and Detention Rules may, to such extent as may be provided by the Rules, be made so as to apply to persons detained in military establishments while serving sentences of imprisonment or detention awarded under the Naval Discipline Act or the Air Force Act, 1955, notwithstanding that such persons are not for the time being subject to military law.

(5) The Secretary of State may as respects any area in which persons subject to military law are on active service delegate his power to make Imprisonment and Detention Rules to the officer commanding the command within which those persons are serving, subject to such restrictions, reservations, exceptions and conditions as the Secretary of State may think fit.

**123.**—(1) Regulations made under section one hundred and twenty-one of this Act or Imprisonment and Detention Rules may contain such incidental and supplementary provisions as appear to the Secretary of State to be requisite for the purposes of the regulations or rules. Supplementary provisions relating to regulations and rules under ss. 121 & 122.

(2) Any such regulations or rules as aforesaid made by the Secretary of State shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**124.** A person shall not be required to serve any part of a military sentence of detention in a military or civil prison: Restrictions on serving of sentences of detention in prisons.

Provided that in such cases and subject to such conditions as may be specified by or under Imprisonment and Detention Rules a person serving such a sentence may be temporarily detained in a military or civil prison for any period not exceeding seven days.

**125.**—(1) A person sentenced to death or imprisonment and committed or transferred to a civil prison in pursuance of regulations under section one hundred and twenty-one of this Act or of Imprisonment and Detention Rules shall while in that prison be confined and otherwise dealt with in the same manner as a person confined therein under a like sentence of a civil court. Special provisions as to civil prisons in the United Kingdom.

(2) The Capital Punishment Amendment Act, 1868, and any rules made under section seven of that Act shall apply in relation to the execution in a civil prison of a sentence of death

PART II  
—cont.

passed by a court-martial for any offence, but with the substitution in that Act for references to the sheriff of references to the provost marshal or other provost officer responsible for the due execution of the sentence.

Special provisions as to carrying out or serving of sentences outside the United Kingdom otherwise than in military establishments.

**126.**—(1) A Secretary of State may from time to time make arrangements with the authorities of any country or territory outside the United Kingdom whereby sentences of death passed by courts-martial may in accordance with regulations under section one hundred and twenty-one of this Act be carried out in establishments under the control of those authorities and military sentences of imprisonment or detention may in accordance with Imprisonment and Detention Rules be served wholly or partly in such establishments.

(2) The powers conferred on the Secretary of State by sections one hundred and twenty-one and one hundred and twenty-two of this Act shall extend to the making of such provision as appears to the Secretary of State necessary or expedient for giving effect to any arrangements made under the last foregoing subsection.

(3) The said powers shall be so exercised as to secure that no sentence of death passed by a court-martial shall be executed, and no military sentence of imprisonment or detention shall be served, in an establishment in any country or territory outside the United Kingdom not being a military establishment, except in accordance with arrangements made as respects that country or territory.

Country in which sentence of imprisonment or detention to be served.

**127.**—(1) A person who is serving a military sentence of imprisonment or detention in the United Kingdom may (in so far as may be specified by or under Imprisonment and Detention Rules) be removed out of the United Kingdom—

(a) to any colony in which he was enlisted ; or

(b) to any place out of the United Kingdom where the corps or any part thereof to which for the time being he belongs is serving or is under orders to serve,

but not to any other place.

(2) Subject to the following provisions of this section, a person sentenced under this Act, by a court-martial held out of the United Kingdom, to imprisonment or detention for more than twelve months shall as soon as practicable after the confirmation of the sentence is completed be removed to the United Kingdom.

(3) The last foregoing subsection shall not apply in relation to any person belonging to a class of persons specified by or

under Imprisonment and Detention Rules as persons whose removal to the United Kingdom would for reasons of climate, place of birth or place of enlistment or any other reason not be beneficial.

PART II  
—cont.

(4) Where a person has been sentenced under this Act, by a court-martial held out of the United Kingdom, to imprisonment or detention for more than twelve months, the confirming officer or reviewing authority may notwithstanding anything in subsection (2) of this section direct that he shall not be required to be removed to the United Kingdom until he has served such part of his sentence, not exceeding (in the case of a sentence of more than two years' imprisonment) two years, as may be specified in the direction; and in determining whether or not to exercise the powers conferred by this subsection a confirming officer or reviewing authority shall have regard to any recommendation in that behalf made by the court-martial.

(5) Any direction of a confirming officer under this section may at any time be revoked by the confirming officer or by a reviewing authority, or superseded by any direction of the confirming officer or a reviewing authority which the officer or authority could have given under the last foregoing subsection; and any direction of a reviewing authority under this section may at any time be revoked by a reviewing authority or superseded as aforesaid.

(6) Any direction given under this section, and the revocation of any such direction, shall be promulgated.

(7) In ascertaining at any time for the purposes of this section the nature or length of a sentence regard shall be had to any commutation or remission of the sentence previously directed.

**128.**—(1) Section five of the Capital Punishment Amendment Act, 1868 (which makes special provision for the holding of inquests on the bodies of persons on whom judgment of death has been executed within the jurisdiction of a coroner) shall apply in relation to the execution, in any premises in the United Kingdom under the control of the Secretary of State within such jurisdiction, of a sentence of death passed under this Act by a court-martial as it applies to the execution of a judgment of death passed by a civil court, but with the substitution for the reference to the sheriff of a reference to the provost marshal or other provost officer responsible for the due execution of the sentence.

Application of  
enactments  
relating to  
coroners.

(2) The Coroners Acts, 1887 to 1926 shall apply in relation to any premises in the United Kingdom under the control of the Secretary of State and allocated for the accommodation of persons sentenced by court-martial to imprisonment or detention as those Acts apply in relation to a prison.



**PART II**  
—*cont.*

Duties of  
governors of  
prisons and  
others to  
receive  
prisoners.

**129.**—(1) It shall be the duty of the governor of a civil prison, or, in so far as regulations under section one hundred and twenty-one of this Act or Imprisonment and Detention Rules so provide, of the superintendent or other person in charge of a prison (not being a military prison) in a colony, to receive any person duly sent to that prison in pursuance of the regulations or rules and to confine him until execution of the sentence is completed or the prisoner is discharged or delivered over in due course of law.

(2) Where a person is in military custody in pursuance of a military sentence of imprisonment or detention, then on receipt of a written order in that behalf purporting to be signed by that person's commanding officer it shall be the duty of any such governor, superintendent or other person as aforesaid, of the police officer in charge of a police station or of any person in charge of any other place in which prisoners may be lawfully confined (whether the station or place is in the United Kingdom or in a colony) to keep that person in custody for a period not exceeding seven days unless the said person is earlier discharged or delivered over in due course of law.

Application  
to air-force  
establishments  
and custody.

**130.**—(1) In section one hundred and eighteen of this Act, the reference in subsection (2) to a military establishment shall include a reference to an air-force establishment (within the meaning of the Air Force Act, 1955).

(2) In section one hundred and nineteen of this Act references to a military establishment and to Imprisonment and Detention Rules shall include respectively references to such an air-force establishment as aforesaid and to Imprisonment and Detention Rules made under the Air Force Act, 1955, and the reference in subsection (5) to military custody shall include a reference to air-force custody.

(3) In section one hundred and twenty-four of this Act the reference to a military prison shall include a reference to an air-force prison (within the meaning of the Air Force Act, 1955).

(4) In subsection (3) of section one hundred and twenty-six of this Act the reference to a military establishment shall include a reference to an air-force establishment (within the meaning of the Air Force Act, 1955).

*Trial of persons ceasing to be subject to military law and time limits for trials*

Trial and  
punishment of  
offences under  
military law  
notwithstanding  
offender ceasing  
to be subject to  
military law.

**131.**—(1) Subject to the provisions of the next following section, where an offence under this Act triable by court-martial has been committed, or is reasonably suspected of having been committed, by any person while subject to military law, then in relation to that offence he shall be treated, for the purposes of the provisions of this Act relating to arrest, keeping in custody, investigation of charges, trial and punishment by

court-martial (including confirmation, review, reconsideration and suspension) and execution of sentences as continuing subject to military law notwithstanding his ceasing at any time to be subject thereto.

(2) Where, while a person is in military or air-force custody by virtue of this section (whether before, during or after trial) he commits, or is reasonably suspected of having committed, an offence which if he were subject to military law would be an offence under this Act triable by court-martial, then in relation to that offence or suspected offence he shall be treated, for the purposes of the provisions of this Act mentioned in the last foregoing subsection and the provisions thereof as to the summary dealing with charges, as having been subject to military law when the offence was committed or is suspected of having been committed and as continuing subject to military law thereafter.

(3) Where by virtue of either of the two last foregoing subsections a person is treated as being at any time subject to military law for the purpose of any provision of this Act, that provision shall apply to him—

- (a) if he holds any military rank, as to a person having that rank ;
- (b) if he holds any naval or air-force rank or rating, as to a person having the corresponding military rank ;
- (c) otherwise as to a person having the rank which he had when last actually subject to military law :

Provided that as respects any time after he has been sentenced for the offence in question and the sentence has been confirmed the said provision shall apply to him (in any case) as to a soldier.

(4) Where apart from this subsection any provision of this Act would under the last foregoing subsection apply to a person, in relation to different offences, as to a person having different ranks, it shall apply to him as to a person having the lower or lowest of those ranks.

**132.**—(1) No person shall be tried by court-martial for any offence, other than one against section thirty-one or thirty-two of this Act or desertion, unless the trial is begun within three years after the commission of the offence, there being disregarded any time during which he was a prisoner of war and any time during which he was illegally absent : Limitation of time for trial of offences under military law.

Provided that—

- (a) in the case of an offence against section seventy of this Act where proceedings for the corresponding civil offence must, by virtue of any enactment, be brought within a limited time, that limit of time shall apply to the trial of the offence under the said section seventy in substitution for the foregoing provisions of this subsection ;

PART II  
—cont.

(b) subject to any such limit of time as is mentioned in the last foregoing paragraph, a person may be tried by court-martial for a civil offence committed outside the United Kingdom notwithstanding that it was committed more than three years before the beginning of the trial, if the Attorney General consents to the trial.

(2) Where a person who has committed an offence of desertion, other than desertion on active service, has since the offence served as a member of the regular forces continuously in an exemplary manner for not less than three years, he shall not be tried for that offence.

(3) A person shall not be triable by virtue of subsection (1) of the last foregoing section unless his trial is begun within three months after he ceases to be subject to military law, or the trial is for a civil offence committed outside the United Kingdom and the Attorney General consents to the trial:

Provided that this subsection shall not apply to an offence against section thirty-one or thirty-two of this Act or desertion.

(4) A person shall not be arrested or kept in custody by virtue of subsection (1) of the last foregoing section for an offence at any time after he has ceased to be triable for the offence.

*Relations between military law and civil courts and  
finality of trials*

Powers of  
civil courts.

**133.**—(1) Nothing in this Act restricts the offences for which persons may be tried by any civil court, or the jurisdiction of any civil court to try a person subject to military law for any offence.

(2) Where a person is tried by a civil court for any offence, and he has previously been sentenced by court-martial to punishment for any act or omission constituting (whether wholly or in part) that offence, or in pursuance of this Act he has been punished for any such act or omission by his commanding officer or the appropriate superior authority, the civil court shall, in awarding punishment, have regard to his punishment in pursuance of this Act.

Persons not to  
be tried under  
this Act for  
offences  
already  
disposed of.

**134.**—(1) Where a person subject to military law—

- (a) has been tried for an offence by a competent civil court or a court-martial (whether held under this Act, the Naval Discipline Act or the Air Force Act, 1955), or has had an offence committed by him taken into consideration by any such court in sentencing him, or
- (b) has been charged with an offence under this Act, the Naval Discipline Act or the Air Force Act, 1955, and has had the charge dismissed, or has been found guilty on the charge, by his commanding officer or the appropriate superior authority, or

- (c) has had an offence condoned by his commanding officer (whether military, naval or air-force),

he shall not be liable in respect of that offence to be tried by court-martial or to have the case dealt with summarily by his commanding officer or the appropriate superior authority.

(2) For the purposes of this section—

- (a) a person shall not be deemed to have been tried by a court-martial if confirmation is withheld of a finding by the court-martial that he is guilty of the offence ;
- (b) a person shall not be deemed to have had an offence taken into consideration by a court-martial in sentencing him if confirmation of the sentence of the court is withheld or the sentence is quashed ;
- (c) a case shall be deemed to have been dealt with summarily by the commanding officer or appropriate superior authority notwithstanding that the finding of that officer or authority has been quashed, or the award of that officer or authority quashed or varied, on the review thereof ;
- (d) an offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorised by him to act in relation to the alleged offence has with knowledge of all relevant circumstances informed him that he will not be charged therewith ;
- (e) a person ordered under subsection (2) of section fifty-seven of this Act or the corresponding provision of the Air Force Act, 1955, to be imprisoned or to undergo detention for an offence against that section or provision shall be deemed to have been tried by court-martial for the offence.

(3) Where confirmation of a finding of guilty of an offence is withheld the accused shall not be tried again by court-martial for that offence unless the order convening the later court-martial is issued not later than twenty-eight days after the promulgation of the decision to withhold confirmation.

(4) Save as provided in the foregoing provisions of this section, proceedings for an offence against this Act (whether before a commanding officer or appropriate superior authority or before a court-martial) shall not be barred on the ground of condonation.

### *Inquiries*

**135.**—(1) Subject to and in accordance with the provisions of Boards of rules made under this section (hereinafter referred to as “ board inquiry. of inquiry rules ”), the Army Council or any military, naval or air-force officer empowered by or under such rules so to do may

**PART II**  
**—cont.**

convene a board of inquiry to investigate and report on the facts relating to—

- (a) the absence of any person subject to military law ;
- (b) the capture of any such person by the enemy ;
- (c) the death of any person in a military establishment, being an establishment in any country or territory outside the United Kingdom where an inquiry into the death is not required to be held by any civil authority ;
- (d) any other matter of a class specified in such rules or referred to such a board by the Army Council or any such officer as aforesaid ;

and a board of inquiry shall, if directed so to do, express their opinion on any question arising out of any matter referred to the board.

(2) A board of inquiry shall consist of not less than three members, who shall be persons subject to military law, the Naval Discipline Act or air-force law, and the president of a board of inquiry shall be an officer not below the rank of captain or corresponding rank.

(3) Subject to the provisions of this section, board of inquiry rules may make provision with respect to the convening, constitution and procedure of boards of inquiry and, without prejudice to the generality of the foregoing, may make provision with respect to all or any of the following matters, that is to say :—

- (a) the rules of evidence to be observed by boards of inquiry and the taking of evidence before such boards, so however that the rules shall provide for the taking of evidence on oath or affirmation except in circumstances such that if the evidence were being taken at a court-martial an oath could be dispensed with ;
- (b) without prejudice to the provisions of the next following section, the making in service books of records of findings of boards of inquiry in such cases as may be provided by the rules ;
- (c) such incidental and supplementary matters as appear requisite for the purposes of the rules.

(4) Board of inquiry rules shall contain provision for securing that any witness or other person who may be affected by the findings of a board of inquiry shall have an opportunity of being present, and represented, at the sittings of the board or such part thereof as may be specified by or under the rules.

(5) Evidence given before a board of inquiry shall not be admissible against any person in proceedings before a court-martial, commanding officer or appropriate superior authority, other than proceedings for an offence against section fifty-eight of this Act or for an offence against section seventy of this Act where the corresponding civil offence is perjury.

(6) The power to make board of inquiry rules shall be exercisable by the Secretary of State by statutory instrument which shall be laid before Parliament.

PART II  
—cont.

**136.**—(1) Where a board of inquiry inquiring into the absence of an officer, warrant officer, non-commissioned officer or soldier reports that he has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty-one days, a record of the report shall in accordance with Queen's Regulations be entered in the service books. Inquiries into absence.

(2) A record entered in pursuance of the last foregoing subsection shall, unless the absentee subsequently surrenders or is arrested, or the report of the board of inquiry is annulled by the Army Council or a subsequent board of inquiry, have the like effect as a conviction by court-martial for desertion.

**137.**—(1) An officer of any of Her Majesty's military forces authorised in that behalf by or under regulations of the Army Council may cause an inquiry to be held, in such manner and by such person or persons subject to military law, the Naval Discipline Act or air-force law as may be specified by or determined under such regulations, into any matter so specified or determined: Regimental inquiries.

Provided that an inquiry shall not be held in pursuance of this section into—

- (a) the absence of a person subject to military law, or
- (b) the capture of any such person by the enemy.

(2) Regulations of the Army Council made for the purposes of this section may make provision as to the rules of evidence to be observed at inquiries held in pursuance of this section and the taking of evidence at such inquiries, and may authorise the taking of evidence on oath or affirmation, and the administration of oaths, in such cases as may be specified by or under the regulations.

(3) Subsections (4) and (5) of section one hundred and thirty-five of this Act shall apply in relation to inquiries held in pursuance of this section with the substitution of references to regulations of the Army Council for references to board of inquiry rules and of references to an inquiry held in pursuance of this section for references to a board of inquiry.

#### *Miscellaneous provisions*

**138.**—(1) The following provisions shall have effect where a person has been convicted by court-martial of unlawfully obtaining any property, whether by stealing it, receiving it knowing it to have been stolen, fraudulently misapplying it or otherwise. Restitution or compensation for theft, etc.

PART II  
—cont.

(2) If any of the property unlawfully obtained has been found in the possession of the offender, it may be ordered to be delivered or paid to the person appearing to be the owner thereof.

(3) If there has been found in the possession of the offender any property (other than money) appearing to have been obtained by him by the conversion or exchange of any of the property unlawfully obtained, the property may be ordered to be delivered to the person appearing to be the owner of the property unlawfully obtained.

(4) Where money is found in the possession of the offender, then whether or not it appears to have been obtained as aforesaid an order may be made that there shall be paid out of that money to the person appearing to be the owner of the property unlawfully obtained such sum as may be specified in the order as or towards compensation for the loss caused to the said person by the offence, in so far as not otherwise made good under this Act or by the recovery of the property unlawfully obtained.

(5) Where any of the property unlawfully obtained has been sold or given in pawn to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property sold or given as aforesaid, there shall be paid to the said other person, out of any money found in the possession of the offender (whether or not the money appears to be proceeds of the sale or giving in pawn), such sum as may be specified in the order as or towards compensation for the loss caused to him in consequence of the sale or giving in pawn.

(6) Where any of the property unlawfully obtained has been given in exchange to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property given as aforesaid, there shall be restored to the said other person the property taken in exchange for the property unlawfully obtained.

(7) An order under this section may be made by the court-martial by whom the offender is convicted, by the confirming officer, or by any reviewing authority; and in this section the expression "appearing" means appearing to the court, officer or authority making the order.

(8) An order under this section made by a court-martial shall not have effect until confirmed by the confirming officer; and the provisions of this Part of this Act as to the confirmation and review of the proceedings of courts-martial shall apply to an order under this section as they apply to a sentence.



(9) The operation of any order under this section shall be suspended—

(a) in any case, until the expiration of the period prescribed under Part I of the Courts-Martial (Appeals) Act, 1951, as the period within which an application for leave to appeal to the Courts-Martial Appeal Court against the conviction must be lodged ; and

(b) if such an application is duly lodged, until either the application is finally refused or is withdrawn or the appeal is determined or abandoned ;

and where the operation of such an order as aforesaid is suspended under this section—

(c) it shall not take effect if the conviction is quashed on appeal ;

(d) the Courts-Martial Appeal Court may by order annul or vary the order although the conviction is not quashed ;

(e) such steps shall be taken for the safe custody, during the period during which the operation of the order is suspended, of the property ordered to be restored or handed over or the money to which the order relates as may be provided by rules of court made under the said Act of 1951.

(10) Notwithstanding anything in the last foregoing subsection, an order under this section shall not, so far as it relates to the delivery of property to the person appearing to be the owner thereof, be suspended if the court, officer or authority making the order directs to the contrary in any case in which, in the opinion of the court, officer or authority, the title to the property is not in dispute.

(11) An order under this section shall not bar the right of any person, other than the offender or a person claiming through him, to recover any property delivered or paid in pursuance of such an order from the person to whom it is delivered or paid.

139. Without prejudice to the powers conferred by Her Majesty on the Judge Advocate General, the appointment of a judge advocate to act at any court-martial may, failing the making thereof by or on behalf of the Judge Advocate General, be made by the convening officer. Appointment of judge advocates.

140. Any finding, sentence, determination or other thing required by this Act to be promulgated shall be promulgated either by being communicated to the accused or in such other manner as may be specified by Queen's Regulations or as the confirming officer or reviewing authority, as the case may be, may direct. Promulgation

**PART II**  
—*cont.*

Custody of  
proceedings of  
courts-martial  
and right of  
accused to a  
copy thereof.

**141.**—(1) The record of the proceedings of a court-martial shall be kept in the custody of the Judge Advocate General for not less than the prescribed period, being a period sufficient to ensure that the rights conferred by the two next following subsections shall be capable of being exercised.

(2) Subject to the provisions of this section, any person tried by a court-martial shall be entitled to obtain from the Judge Advocate General on demand at any time within the relevant period and on payment therefor at such rate as may be prescribed a copy of the record of the proceedings of the court.

(3) Where a person tried by court-martial dies within the relevant period, his personal representatives or any person who in the opinion of the Judge Advocate General ought to be treated for the purposes of this subsection as his personal representative shall subject to the provisions of this section be entitled to obtain from the Judge Advocate General on demand at any time within the period of twelve months from the death and on payment therefor at the prescribed rate a copy of the record of the proceedings of the court.

(4) If, on an application in pursuance of either of the two last foregoing subsections for a copy of the record of any proceedings, the Secretary of State certifies that it is requisite for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or part to which the certificate relates.

(5) In this section the expression "the relevant period", in relation to any person tried by court-martial, means the period of five years beginning with the date of his acquittal or, where he was convicted, of the promulgation of the findings and sentence or, where a finding of guilty was not confirmed, of the promulgation of the withholding of confirmation:

Provided that where the proceedings relate to two or more charges and the person tried was acquitted on one or more of the charges and convicted on another or others, the relevant period shall be the period of five years beginning with the date of the promulgation of the finding or findings of guilty and the sentence thereon or of the withholding of confirmation of that finding or those findings.

(6) Any reference in this section to the record of the proceedings of a court-martial includes a reference to the record of the proceedings with respect to the confirmation or revision of the findings and sentence of the court-martial.

**142.** No action shall lie in respect of anything done by any person in pursuance of a military sentence of imprisonment or detention if the doing thereof would have been lawful but for a defect in any warrant or other instrument made for the purposes of that sentence.

*Interpretation***PART II**  
—cont.**143.**—(1) In this Part of this Act:—Interpretation  
of Part II.

“civil prison” means a prison in the United Kingdom in which a person sentenced by a civil court to imprisonment can for the time being be confined ;

“convening officer”, in relation to a court-martial, means the officer convening that court-martial and includes his successor or any person for the time being exercising his or his successor’s functions ;

“military establishment” means a military prison or any other establishment under the control of the Secretary of State where persons may be required to serve military sentences of imprisonment or detention ;

“military prison” means separate premises under the control of the Secretary of State and primarily allocated for persons serving military sentences of imprisonment ;

references to a military sentence of imprisonment are references to a sentence of imprisonment passed by a court-martial ;

references to a military sentence of detention are references to a sentence of detention passed by a court-martial or awarded by the offender’s commanding officer ;

“prescribed” means prescribed by Rules of Procedure.

(2) References in this Part of this Act to warrant officers do not include references to acting warrant officers.

(3) References in this Part of this Act to non-commissioned officers include references to acting non-commissioned officers and also to acting warrant officers.

**PART III****FORFEITURES AND DEDUCTIONS AND ENFORCEMENT OF  
MAINTENANCE LIABILITIES**

**144.**—(1) No forfeiture of the pay of an officer, warrant officer, non-commissioned officer or soldier of the regular forces shall be imposed unless authorised by this or some other Act, and no deduction from such pay shall be made unless so authorised or authorised by Royal Warrant. Forfeitures and deductions: general provisions.

(2) A Royal Warrant shall not authorise the making of any penal deduction, that is to say a deduction to be made by reason of the commission of any offence or other wrongful act or in consequence of any negligence.

(3) The foregoing provisions of this section shall not prevent the making, by Royal Warrant or by any regulation, order or instruction of the Army Council, of provision for the imposition of any forfeiture authorised by Act or the making of any deduction so authorised, or for the time at which and manner in which sums may be deducted from pay to give effect to authorised deductions or in which amounts may be so deducted in order to recover

PART III  
—cont.

any fine imposed in pursuance of this Act, or as to the appropriation of any such sum or amount when deducted, or of provision for the determination of questions relating to forfeitures or deductions.

(4) Subsection (2) of this section shall not prevent the making by Royal Warrant of provision for the deduction from a person's pay as an officer, warrant officer, non-commissioned officer or soldier of the regular forces of any sum which has become recoverable from him (whether by deduction from pay or otherwise) under the enactments relating to any of the reserve or auxiliary forces.

(5) Notwithstanding any deduction from the pay of an officer, warrant officer, non-commissioned officer or soldier of the regular forces he shall (subject to any forfeiture) remain in receipt of pay at not less than such minimum rate as may be prescribed by order of the Army Council.

(6) Notwithstanding that forfeiture of a person's pay for any period has been ordered in pursuance of this Act, he may remain in receipt of pay at such minimum rate as aforesaid; but the amount received for that period may be recovered from him by deduction from pay.

(7) Any amount authorised to be deducted from the pay of an officer, warrant officer, non-commissioned officer or soldier of the regular forces may be deducted from any balance (whether or not representing pay) which may be due to him, and references in this Act to the making of deductions from pay shall be construed accordingly.

Forfeiture of  
pay for  
absence from  
duty.

**145.**—(1) The pay of an officer, warrant officer, non-commissioned officer or soldier of the regular forces may be forfeited:—

- (a) for any day of absence in such circumstances as to constitute an offence under section thirty-seven or thirty-eight of this Act or, if the Army Council or an officer authorised by them so direct, of other absence without leave;
- (b) for any day of imprisonment, detention or field punishment awarded under this Act, the Naval Discipline Act or the Air Force Act, 1955, by a court-martial or commanding officer, or of imprisonment, corrective training, preventive detention, detention in a Borstal institution or detention of any other description to which he is liable in consequence of an order or sentence of a civil court or an order of recall made by the Prison Commissioners, the Secretary of State or the Ministry of Home Affairs for Northern Ireland;
- (c) where he is found guilty (whether by court-martial, the appropriate superior authority or his commanding

officer) of an offence under this Act, the Naval Discipline Act or the Air Force Act, 1955, for any day (whether before or after he is found guilty) on which he is in hospital on account of sickness or injury certified by the proper medical officer to have been occasioned by the offence.

(2) The pay of an officer, warrant officer, non-commissioned officer or soldier of the regular forces may be forfeited for any day of absence by reason of his having been made a prisoner of war if the Army Council or an officer authorised by them are satisfied—

- (a) that he was made a prisoner of war through disobedience to orders or wilful neglect of his duty; or
- (b) that having been made a prisoner of war he failed to take any reasonable steps available to him to rejoin Her Majesty's service; or
- (c) that having been made a prisoner of war he served with or aided the enemy in the prosecution of hostilities or measures calculated to influence morale or in any other manner whatsoever not authorised by international usage,

and nothing in paragraph (a) of the last foregoing subsection shall apply to absence by reason of having been made a prisoner of war.

(3) Regulations or orders of the Army Council may make provision as to the computation of time for the purposes of this section and in particular as to the counting or disregarding of parts of days.

**146.** Where an officer, warrant officer, non-commissioned officer or soldier of the regular forces charged with an offence before a civil court (whether within or without Her Majesty's dominions) is sentenced or ordered by the court to pay any fine, penalty, damages, compensation or costs, and the whole or part thereof is met by a payment made by or on behalf of any military authority, the amount of the payment may be deducted from his pay. Deductions for payment of civil penalties.

**147.**—(1) Without prejudice to the provisions of this Act as to the imposition of stoppages as a punishment, the following provisions shall have effect where, after such investigation as may be prescribed by regulations of the Army Council, it appears to the Army Council or an officer authorised by them that any loss of, or damage to, public or service property has been occasioned by any wrongful act or negligence of an officer, warrant officer, non-commissioned officer or soldier of the regular forces (hereinafter referred to as “the person responsible”). Compensation for loss occasioned by wrongful act or negligence.

(2) The Army Council or authorised officer, as the case may be, may order the person responsible to pay, as or towards compensation for the loss or damage, such sum as may be specified

**PART III**  
—*cont.*

in the order; and any such sum, in so far as not otherwise paid by the person responsible, may be deducted from his pay.

(3) No order shall be made under the last foregoing subsection if, in proceedings (whether under this Act, the Naval Discipline Act or the Air Force Act, 1955) before a court-martial, the appropriate superior authority or the commanding officer of the person responsible, that person—

(a) has been acquitted in circumstances involving a finding that he was not guilty of the wrongful act or negligence in question, or

(b) has been awarded stoppages in respect of the same loss or damage;

but save as aforesaid, the fact that any such proceedings have been brought in respect of the wrongful act or negligence in question shall not prevent the making of an order or deductions under the last foregoing subsection.

**Deductions for  
barrack  
damage.**

**148.**—(1) Where damage occurs to any premises in which one or more units of the regular forces or parts of such units are quartered or billeted, or any fixtures, furniture or effects in or belonging to such premises are damaged or lost, then if it appears, on investigation in accordance with the provisions of Queen's Regulations, that the damage or loss was occasioned by the wrongful act or negligence of persons belonging to any of the units or parts of units in occupation of the premises and was so occasioned at a time when they were in occupation thereof, but that the said persons cannot be identified, any person belonging to any of the said units or parts of units may be required to contribute towards compensation for the damage or loss such amount as may in accordance with Queen's Regulations be determined to be just, and the amount may be deducted from his pay.

(2) The last foregoing subsection shall extend to ships, trains and aircraft in which units or parts of units of the regular forces are being transported, and references to premises, quartering and occupation shall be construed accordingly.

**Remission of  
forfeitures and  
deductions.**

**149.** Any forfeiture or deduction imposed under the four last foregoing sections or under Royal Warrant may be remitted by the Army Council or in such manner and by such authority as may be provided by Royal Warrant.

**Enforcement  
of maintenance  
and affiliation  
orders by  
deduction from  
pay.**

**150.**—(1) Where any court in the United Kingdom has made an order against any person (hereinafter referred to as "the defendant") for the payment of any periodical or other sum specified in the order for or in respect of—

(a) the maintenance of his wife or child or of any illegitimate child of whom he is the putative father; or

(b) any costs incurred in obtaining the order; or

(c) any costs incurred in proceedings on appeal against, or

for the variation, revocation or revival of, any such order,

and the defendant is an officer, warrant officer, non-commissioned officer or soldier of the regular forces, then (whether or not he was a member of those forces when the said order was made) the Army Council or an officer authorised by them may order such sum to be deducted from the pay of the defendant and appropriated in or towards satisfaction of the payment due under the order of the court as the Army Council or officer think fit.

(2) Where to the knowledge of the court making any such order as aforesaid, or an order varying, revoking or reviving any such order, the defendant is an officer, warrant officer, non-commissioned officer or soldier of the regular forces the court shall send a copy of the order to the Army Council or an officer authorised by them.

(3) Where such an order as is mentioned in subsection (1) of this section has been made by a court in Her Majesty's dominions outside the United Kingdom, and the Army Council or an officer authorised by them are satisfied that the defendant has had a reasonable opportunity of appearing in person, or has appeared by a duly authorised legal representative, to defend the case before the court by which the order was made, the Army Council or officer shall have the like power under subsection (1) of this section as if the order had been made by such a court as is mentioned in that subsection :

Provided that this subsection shall not apply to an order for payment of a sum for or in respect of the maintenance of an illegitimate child or for the payment of costs incurred in obtaining such an order or in proceedings on appeal against, or for the variation, revocation or revival of, such an order.

(4) The Army Council or an officer authorised by them may by order vary or revoke any order previously made under this section, and may treat any order made under this section as being in suspense at any time while the person against whom the order was made is absent as mentioned in paragraph (a) of subsection (1) of section one hundred and forty-five of this Act.

(5) In this section—

references to an order made by a court in the United Kingdom include references to an order registered in or confirmed by such a court under the provisions of the Maintenance Orders (Facilities for Enforcement) Act, 1920 ;

references to a wife or child include, in relation to an order made in proceedings in connection with the dissolution or annulment of a marriage, references to a person who would have been the wife or child of the defendant if the marriage had subsisted ;

references to a sum ordered to be paid for or in respect of the maintenance of an illegitimate child include references



PART III  
—cont.

to any sum ordered to be paid by an order under section four of the Bastardy Laws Amendment Act, 1872.

Deductions  
from pay for  
maintenance  
of wife or  
child.

**151.**—(1) Where the Army Council or an officer authorised by them are satisfied that an officer, warrant officer, non-commissioned officer or soldier of the regular forces is neglecting, without reasonable cause, to maintain his wife or any child of his under the age of sixteen the Army Council or officer may order such sum to be deducted from his pay and appropriated towards the maintenance of his wife or child as the Army Council or officer think fit.

(2) On an application made to the Army Council or an officer authorised by them for an order under the last foregoing subsection the Army Council or officer, if satisfied that a *prima facie* case has been made out for the making of such an order, may make an interim order for such deduction and appropriation as is mentioned in the last foregoing subsection to take effect pending the further examination of the case.

(3) Where an order is in force under subsection (1) or subsection (3) of the last foregoing section for the making of deductions in favour of any person from the pay of an officer, warrant officer, non-commissioned officer or soldier of the regular forces, no deductions from his pay in favour of the same person shall be ordered under the foregoing provisions of this section unless the officer, warrant officer, non-commissioned officer or soldier is in a place where process cannot be served on him in connection with proceedings for the variation of the order of the court in consequence of which the order under the last foregoing section was made.

(4) The Army Council or an officer authorised by them may by order vary or revoke any order previously made under this section, and may treat any order made under this section as being in suspense at any time while the person against whom the order was made is absent as mentioned in paragraph (a) of subsection (1) of section one hundred and forty-five of this Act.

(5) The power to make an order under this section for the deduction of any sum and its appropriation towards the maintenance of a child shall include power—

(a) subject to the provisions of subsection (3) of this section, to make such an order after the child has attained the age of sixteen, if an order in favour of the child is in force under subsection (1) or subsection (3) of the last foregoing section ; or

(b) to make such an order after the child has attained the age of sixteen if—

(i) such an order of the court as is mentioned in subsection (1) of the last foregoing section was in force in favour of the child at the time when the child attained that age, and

(ii) the person from whose pay the deductions are ordered is in such a place as is mentioned in subsection (3) of this section, and

(iii) the child is for the time being engaged in a course of education or training; or

(c) to continue such an order from time to time after the child has attained the age of sixteen, if the child is for the time being engaged in a course of education or training;

but no order so made or continued shall remain in force after the child attains the age of twenty-one or shall, unless continued under paragraph (c) of this subsection, remain in force for more than two years.

**152.**—(1) The sums deducted under the two last foregoing sections shall not together exceed—

(a) in the case of an officer, three-sevenths of his pay;

(b) in the case of a warrant officer or non-commissioned officer not below the rank of sergeant, two-thirds of his pay;

(c) in the case of a soldier or non-commissioned officer below the rank of sergeant, three-fourths of his pay.

Limit of deductions under ss. 150 and 151 and effect on forfeiture.

(2) Where any deductions have been ordered under either of the two last foregoing sections from a person's pay and (whether before or after the deductions have been ordered) he incurs a forfeiture of pay by or in consequence of the finding or sentence of a court-martial or the finding or award of the appropriate superior authority or his commanding officer, it shall apply only to so much of his pay as remains after the deductions have been made.

(3) For the purposes of paragraphs (b) and (c) of subsection (1) of this section a person having acting rank shall be treated as of that rank.

**153.**—(1) Any process to be served on an officer, warrant officer, non-commissioned officer or soldier of the regular forces (hereinafter referred to as "the defendant") in connection with proceedings for any such order of a court in the United Kingdom as is mentioned in subsection (1) of section one hundred and fifty of this Act, or for the variation, revocation or revival of such an order, shall be deemed to be duly served on him if served either on him or his commanding officer, and may, without prejudice to any other method of service, be so served by registered post.

Service of process in maintenance proceedings.

(2) Where any such process appoints a hearing at a place more than twenty miles from the place where the defendant is then stationed and his appearance in person will be required at

**PART III**  
—cont.

the hearing, the service of the process shall not be valid unless there is left with it, in the hands of the person on whom it is served, a sum of money sufficient to enable the defendant to attend the hearing and return.

(3) Where any such process as is mentioned in subsection (1) of this section is served in the United Kingdom and the defendant will be required to appear in person at the hearing, then if his commanding officer certifies to the court by which the process was issued that the defendant is under orders for active service out of the United Kingdom and that in the commanding officer's opinion it would not be possible for the defendant to attend the hearing and return in time to embark for that service, the service of the process shall be deemed not to have been effected.

**PART IV**

**BILLETING AND REQUISITIONING OF VEHICLES**

*Billeting*

**Billeting  
requisitions.**

**154.** At any time when this section is in operation any general or field officer commanding any part of the regular forces in the United Kingdom may issue a billeting requisition requiring the chief officer of police for any area in the United Kingdom specified in the requisition to provide billets at such places in that area, for such numbers of members of Her Majesty's forces and, if the requisition so provides, for such number of vehicles in use for the purpose of Her Majesty's forces, being vehicles of any class specified in the requisition, as may be so specified.

**Premises in  
which billets  
may be  
provided.**

**155.**—(1) Billets, other than for vehicles, may be provided in pursuance of a billeting requisition—

- (a) in any inn or hotel (whether licensed or not) or in any other premises occupied for the purposes of a business consisting of or including the provision of sleeping accommodation for reward ;
  - (b) in any building not falling within the last foregoing paragraph, being a building to which the public habitually have access, whether on payment or otherwise, or which is wholly or partly provided or maintained out of rates ;
  - (c) in any dwelling, outhouse, warehouse, barn or stables ;
- but not in any other premises.

(2) Billets for vehicles may be provided as aforesaid in any building or on any land.

**Provision  
of billets.**

**156.**—(1) Where a billeting requisition has been produced to the chief officer of police for the area specified in the requisition he shall, on the demand of the officer commanding any portion of the regular forces, or on the demand of an officer or soldier

authorised in writing by such an officer commanding, billet on the occupiers of premises falling within the last foregoing section, being premises at such place in that area as may be specified by the officer or soldier by whom the demand is made, such number of persons or vehicles as may be required by the officer or soldier by whom the demand is made, not exceeding the number specified in the requisition.

(2) Without prejudice to the provisions of the next following section, a chief officer of police shall exercise his functions under this section in such manner as in his opinion will cause least hardship to persons on whom billeting may take place.

(3) A chief officer of police may to such extent and subject to such restrictions as he thinks proper authorise any constable, or constables of any class, to exercise his said functions on his behalf, and the foregoing provisions of this section shall apply accordingly.

**157.**—(1) A local authority may make a scheme for the provision of billets in their area in pursuance of billeting requisitions; and where such a scheme is in force the chief officer of police shall so far as the scheme extends exercise his functions under the last foregoing section in accordance with the scheme. Billeting schemes.

(2) Any scheme under this section may be revoked by the local authority by whom it was made, or may be varied by that authority by a subsequent scheme under this section.

(3) Where a local authority make a scheme under this section they shall furnish the chief officer of police for the area to which the scheme relates with a copy of the scheme.

(4) A scheme under this section shall not come into force until approved by the Minister of Housing and Local Government; and that Minister may require the local authority to revoke any scheme in force under this section and in substitution therefor to submit for his approval a further scheme under this section.

**158.**—(1) Where persons are billeted in pursuance of a billeting requisition, the occupier of the premises on which they are billeted shall furnish such accommodation (including meals) as the officer or soldier demanding the billets may require, not exceeding such accommodation as may be prescribed by regulations of the Army Council made with the consent of the Treasury. Accommodation to be provided and payment therefor.

(2) Where vehicles are billeted as aforesaid, the occupier of the premises shall furnish standing room for the vehicles.

(3) Where persons or vehicles have been billeted in pursuance of a billeting requisition they may continue to be billeted, so long as section one hundred and fifty-four of this Act

**PART IV**  
**—cont.**

continues in operation, for such period as may be required, and the allotment of billets among the persons or vehicles in question may be varied from time to time.

(4) The occupier on whose premises any person or vehicle is billeted as aforesaid shall be entitled to receive for the billeting such payment as may be prescribed by regulations of the Army Council made with the consent of the Treasury :

Provided that no payment shall be required in respect of vehicles billeted otherwise than in a building unless the land on which they are billeted—

(a) has its surface made up for the passage or parking of vehicles, and

(b) is not land where vehicles are normally allowed to stand free of charge irrespective of the person by whom they are owned or driven.

(5) Subject to the provisions of the next following subsection payment for billeting—

(a) shall be made before the persons billeted finally leave, or the vehicles are finally removed from, the premises where they are billeted ; and

(b) where the billeting continues for more than seven days, shall be made at least once in every seven days.

(6) If for any reason payment for billeting cannot be made, or fully made, as required by paragraph (a) of the last foregoing subsection, there shall be made up with the occupier an account, in such form as may be prescribed by the Army Council, of the amount due to him ; and—

(a) on presentation of the account the local authority for the area in which the premises are situated shall pay to the occupier the amount stated in the account to be due,

(b) any sums paid by a local authority under the last foregoing paragraph shall be recoverable by them from the Army Council.

(7) In relation to premises of which there is no occupier the foregoing provisions of this section shall apply as if the person entitled to possession thereof were the occupier thereof.

Appeals  
against  
billeting.

**159.**—(1) Any person who—

(a) is aggrieved by having an undue number of persons billeted upon him in pursuance of a billeting requisition, or

- (b) claims that by reason of special circumstances he should be exempted from having persons so billeted on him, either generally or on a particular occasion,

PART IV  
—cont.

may apply to a person or persons appointed on behalf of the local authority in accordance with arrangements made by the Minister of Housing and Local Government.

(2) On any application on the grounds mentioned in paragraph (a) of the last foregoing subsection the person or persons to whom the application is made may direct the billeting elsewhere of such number of the persons billeted as may seem just or may dismiss the application.

(3) On any application on the grounds mentioned in paragraph (b) of subsection (1) of this section the person or persons to whom the application is made may grant such exemption as may seem just or may dismiss the application.

(4) An application under this section shall not affect billeting pending the determination of the application.

**160.**—(1) Where any damage is caused to any premises by the billeting of persons or vehicles in pursuance of a billeting requisition, the occupier of the premises, or if there is no occupier the person entitled to possession thereof, may recover from the Army Council compensation of an amount equal to the depreciation caused by the damage in the value of the premises. Compensation for damage.

(2) Where any person other than the recipient of compensation under the last foregoing subsection has any interest in the premises, being an interest the value of which is depreciated by the damage, he shall be entitled to recover from the recipient such part of the compensation as may be just.

(3) A county court shall have jurisdiction to deal with any claim arising under subsection (1) or (2) of this section irrespective of the amount of the claim.

**161.** Any person who—

- (a) refuses to receive any person billeted upon him in pursuance of a billeting requisition or without reasonable excuse fails to furnish him with the accommodation properly required for him, or Refusal to receive persons billeted, etc.
- (b) gives or agrees to give to any person billeted upon him in pursuance of a billeting requisition any money or reward in lieu of receiving any person or vehicle or of furnishing accommodation properly required for him, or
- (c) obstructs the billeting in his building or on his land of any vehicle,

PART IV  
—cont.

shall be liable on summary conviction to a fine not exceeding fifty pounds, or to imprisonment for a term not exceeding three months, or to both such a fine and such imprisonment.

Application  
to civilians  
employed with  
the forces.

**162.** In relation to persons employed with any body of the regular forces and not entitled under the foregoing provisions of this Part of this Act to be billeted, being persons of such descriptions as may be prescribed by regulations of the Army Council, those provisions shall apply as they apply in relation to members of Her Majesty's forces.

Local  
authority.

**163.** For the purposes of this Part of this Act the local authority shall be the council of a county borough, county district or metropolitan borough or the Common Council of the City of London.

Suspension of  
laws against  
billeting.

**164.** While section one hundred and fifty-four of this Act is in operation, so much of any law as prohibits, restricts or regulates quartering or billeting on any inhabitant of the United Kingdom shall not apply to such billeting in pursuance of a billeting requisition.

### *Requisitioning of vehicles*

Requisitioning  
orders.

**165.**—(1) At any time when this section is in operation any general or field officer commanding any part of the regular forces in the United Kingdom may issue a requisitioning order authorising the requisitioning, from among vehicles in any area in the United Kingdom specified in the order, of such vehicles, or such number of vehicles of such description, as may be specified in the order.

(2) The purposes for which an order under this section may authorise vehicles to be requisitioned shall be such purposes for meeting the needs of any of Her Majesty's forces as may be specified in the order.

Provision  
of vehicles.

**166.**—(1) A requisitioning order may be issued to the officer commanding any portion of the regular forces, and that officer, or any officer or soldier authorised by him in writing, may give directions for the provision—

- (a) in so far as the requisitioning order authorises the requisitioning of particular vehicles, of all or any of those vehicles,
- (b) in so far as the order authorises the requisitioning of vehicles of a specified description, of the number of vehicles of that description specified in the order or any lesser number of such vehicles.



(2) A direction under the last foregoing subsection given as respects any vehicle shall be either—

PART IV  
—cont.

- (a) a direction given to the person having possession thereof to furnish it immediately at the place where it is, or
- (b) a direction given to the said person to furnish it at such place within one hundred miles from the premises of the said person and at such time as may be specified by the officer or soldier by whom the direction is given :

Provided that no direction shall be given under paragraph (b) of this subsection as respects a vehicle which is neither mechanically propelled nor a trailer normally drawn by a mechanically-propelled vehicle.

(3) If the officer to whom the requisitioning order was issued, or any officer or soldier authorised by him in writing, is satisfied that the said person has refused or neglected to furnish a vehicle in accordance with a direction under any of the provisions of the last foregoing subsection, or has reasonable ground for believing that it is not practicable without undue delay to give a direction to the said person, he may take, or authorise any officer or soldier to take, possession of the vehicle ; and where possession is taken of a vehicle in pursuance of this subsection this Part of this Act shall with the necessary modifications apply as if the vehicle had been furnished by the person having possession of the vehicle in accordance with a direction to furnish it immediately at the place where it is, and, in particular, payment shall be made therefor as if it had been so furnished.

(4) The chief officer of police for any area specified in a requisitioning order shall, on a request to that effect made by or on behalf of the officer to whom the order is issued, give instructions for securing that so far as practicable constables will be available, if required, for accompanying officers or soldiers requisitioning vehicles in pursuance of the order.

**167.**—(1) Subject to the provisions of this section, where a vehicle has been furnished in pursuance of a requisitioning order it may be retained, so long as section one hundred and sixty-five of this Act is in operation, for any period for which it is required for the purpose specified in the order or for any other purpose connected with the needs of any of Her Majesty's forces. Period for which vehicles to be furnished.

(2) While men of the army reserve are called out on permanent service, then in so far as a requisitioning order so provides the person by whom any vehicle is to be furnished may be required to furnish it for the purpose of its being purchased on behalf of the Crown.

PART IV  
—cont.Payment  
for vehicles  
furnished.

**168.**—(1) The person by whom a vehicle is furnished in pursuance of a requisitioning order, and is so furnished otherwise than for the purpose of being purchased, shall be entitled to be paid—

- (a) a sum for the use of the vehicle calculated, by reference to the period for which possession of the vehicle is retained, at the rate of payment commonly recognised or generally prevailing in the district at the time at which the vehicle is furnished, or, in default of such a rate, at such rate as may be just,
- (b) a sum equal to the cost of making good any damage to the vehicle, not being damage resulting in a total loss thereof or damage attributable to fair wear and tear, which may have occurred during the period for which possession of the vehicle is retained and which has not been made good during that period by a person acting on behalf of Her Majesty,
- (c) if, during the said period, a total loss of the vehicle occurs, a sum equal to the value of the vehicle immediately before the occurrence of the damage which caused the loss.

In paragraph (b) of this subsection and in the Fourth Schedule to this Act references to fair wear and tear shall be construed as references to such fair wear and tear as might have been expected to occur but for the fact that the vehicle was requisitioned.

(2) The person by whom a vehicle is furnished in pursuance of a requisitioning order for the purpose of being purchased shall be entitled to be paid the value of the vehicle at the time at which it is furnished.

(3) Where a vehicle is furnished in pursuance of a direction under paragraph (b) of subsection (2) of section one hundred and sixty-six of this Act, then—

- (a) for the purposes of paragraphs (a) and (b) of subsection (1) of this section (if that subsection applies) the period for which possession of the vehicle is retained shall be deemed to begin at the time when the direction is given, and for the purposes of subsection (2) of this section (if that subsection applies) the vehicle shall be deemed to have been furnished at that time ;
- (b) in addition to the payments provided for by subsection (1) or (2) of this section, the person by whom the vehicle is furnished shall be entitled to be paid the amount of any expenditure reasonably incurred by him in complying with the direction.

(4) Where a direction to furnish a vehicle is given under the said paragraph (b), and after the giving of the direction any damage occurs to the vehicle (whether or not resulting in a total loss thereof), then if the damage prevents the furnishing of the vehicle in pursuance of the requisitioning order the foregoing provisions of this section shall apply as if the vehicle had been furnished, and (notwithstanding that it may have been required to be furnished for the purpose of being purchased) had been furnished otherwise than for that purpose, subject however to the following modifications, that is to say—

(a) paragraphs (a), (b) and (c) of subsection (1) of this section shall have effect as if for the period therein mentioned there were substituted the period beginning with the giving of the direction and ending immediately after the occurrence of the damage,

(b) paragraph (b) of the last foregoing subsection shall have effect as if for the words “in complying with” there were substituted the words “by reason of anything done for the purpose of complying with”.

(5) Where any person (hereinafter referred to as a person interested) other than the person by whom a vehicle is required to be furnished has an interest in the vehicle,—

(a) the person by whom the vehicle is required to be furnished shall notify any person known to him to be a person interested that the vehicle has been requisitioned,

(b) any person interested shall be entitled to recover from the person by whom the vehicle was required to be furnished such part (if any) of the payment received by him for the vehicle as may be just.

(6) The Fourth Schedule to this Act shall have effect as to the time for the making of payments under this section and as to the determination of disputes arising thereunder.

(7) Where, during the period for which possession of a vehicle is retained, a total loss of the vehicle occurs, then—

(a) for the purposes of paragraphs (a) and (b) of subsection (1) of this section and of the Fourth Schedule to this Act the said period shall be deemed to have come to an end immediately after the occurrence of the loss, and

(b) no claim shall be made for the return of the vehicle (if it still exists) or for payment in respect thereof other than such as is provided for by subsection (1) of this section.

**169.** In deciding which, of alternative vehicles, is to be specified in an order under section one hundred and sixty-five of this Act, or is to be the subject of a direction under paragraph (b) of subsection (1) of section one hundred and sixty-six thereof, the officer or soldier by whom the order is issued or

Avoidance of hardship in requisitioning of vehicles.

PART IV  
—*cont.*

Record and  
inspection of  
mechanically  
propelled  
vehicles.

direction given shall act in such manner as in his opinion will cause least hardship.

**170.** The Army Council may by regulations require persons having in their possession in the United Kingdom mechanically-propelled vehicles, or trailers normally drawn by mechanically-propelled vehicles, if required so to do by such authority or person as may be specified in the regulations,—

- (a) to furnish to such authority or person as may be so specified a return containing such particulars as to the vehicles as may be required by or under the regulations, and
- (b) to afford all reasonable facilities for enabling any such vehicles in his possession to be inspected and examined, at such times as may be specified by or under the regulations, by such authority or person as may be so specified.

Enforcement  
of provisions  
as to  
requisitioning.

**171.**—(1) If any person—

- (a) fails to furnish any vehicle which he is directed to furnish in pursuance of a requisitioning order, or fails to furnish any such vehicle at the time and place at which he is directed to furnish it, or
- (b) fails to comply with any regulations of the Army Council under the last foregoing section, or
- (c) obstructs any officer or other person in the exercise of his functions under this Part of this Act in relation to the inspection or requisitioning of vehicles.

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding fifty pounds, or to imprisonment for a term not exceeding three months, or to both such a fine and such imprisonment.

(2) Without prejudice to any penalty under the last foregoing subsection, if any person is obstructed in the exercise of powers of inspection conferred on him by regulations under the last foregoing section, a justice of the peace may, if satisfied by information on oath that the person has been so obstructed, issue a search warrant authorising a constable named therein, accompanied by the said person, to enter the premises in respect of which the obstruction took place at any time between six o'clock in the morning and nine o'clock in the evening and to inspect any vehicles which may be found therein.

Application  
to horses,  
food, forage  
and stores.

**172.**—(1) Subject to the provisions of this section, the foregoing provisions of this Part of this Act and the provisions of the Fourth Schedule thereto, except such of those provisions as relate only to mechanically-propelled vehicles and trailers normally drawn thereby, shall apply to horses and mules, food, forage and stores as they apply to vehicles.

(2) Where stores are required for, and can be conveyed with, a vehicle with respect to which a direction is given under paragraph (b) of subsection (2) of section one hundred and sixty-six of this Act, such a direction may be given as well in relation to the stores as in relation to the vehicle, and the said foregoing provisions and Schedule shall apply accordingly :

Provided that subsection (4) of section one hundred and sixty-eight of this Act shall not apply, but if after the giving of the direction the furnishing of the stores is prevented by damage to them or to the vehicle such payment (if any) shall be made in respect of the stores as may be just in all the circumstances.

(3) Notwithstanding anything in section one hundred and sixty-seven of this Act, food, forage or stores to be furnished in pursuance of a requisitioning order at any time may be required to be furnished for purchase on behalf of the Crown.

(4) Section one hundred and seventy of this Act shall apply in relation to horses and mules as it applies in relation to mechanically-propelled vehicles.

(5) In this section the expression “ stores ” means any chattel, other than a horse or mule, a vehicle, food or forage, being a chattel required for, or for use in connection with,—

(a) persons or vehicles billeted or to be billeted in pursuance of a billeting requisition or otherwise temporarily accommodated or to be so accommodated, or

(b) vehicles, horses or mules furnished or to be furnished in pursuance of a requisitioning order.

**173.** The person using a vehicle for the purpose of its being furnished in pursuance of a direction under paragraph (b) of subsection (2) of section one hundred and sixty-six of this Act shall be deemed, as respects any claim in respect of injury or damage to any other person or property, to be so using the vehicle as a servant of the Crown, and section thirty-five of the Road Traffic Act, 1930 (which relates to insurance against third-party risks) shall not apply to the use of a vehicle for the said purpose.

Liability of Crown for damage by vehicles being delivered for requisitioning.

### General

**174.**—(1) Whenever it appears to the Secretary of State that the public interest so requires, he may by order direct that section one hundred and fifty-four or one hundred and sixty-five of this Act, or both those sections, shall come into operation either generally or as respects such area in the United Kingdom as may be specified in the order ; and that section or those sections, as the case may be, shall thereupon come into operation and remain in operation so long as the order has effect.

Bringing into operation of ss. 154 and 165.

**PART IV**  
—*cont.*

(2) As soon as may be after either of the said sections has been brought into operation on any occasion, the Secretary of State shall report that fact to Parliament.

(3) An order under this section shall, subject to any revocation or variation thereof, continue to have effect for the period of one month from the making thereof:

Provided that where, before the expiration of the period for which the order has effect (whether by virtue of the foregoing provisions of this subsection or of this proviso), it is resolved by each House of Parliament that the public interest requires that the operation of the order should be extended for such further period as may be specified in the resolution, it shall be extended accordingly.

**Regulations  
and orders.**

**175.**—(1) Any power to make regulations conferred by this Part of this Act shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(2) The power to make orders conferred on the Secretary of State by the last foregoing section shall be exercisable by statutory instrument.

**Interpretation  
of Part IV.**

**176.** References in this Part of this Act to soldiers shall include references to warrant officers and to non-commissioned officers.

## PART V

### GENERAL PROVISIONS

#### *Powers of command*

**Powers of  
command.**

**177.**—(1) It is hereby declared for the avoidance of doubt that Her Majesty may make regulations as to the persons, being members of Her Majesty's forces, in whom command over Her Majesty's military forces, or any part or member thereof, is to be vested and as to the circumstances in which such command as aforesaid is to be exercised.

(2) In relation to members of Her Majesty's military forces when in aircraft, the last foregoing subsection shall have effect as if references to members of Her Majesty's forces included references to any person in command of an aircraft.

(3) Nothing in this section shall affect any power vested in Her Majesty apart from this section.

**Powers of  
command of  
members of  
co-operating  
naval or  
air forces.**

**178.** In so far as powers of command depend on rank, a member of any of Her Majesty's naval or air forces who—

(a) is acting with, or

(b) is a member of a body of any of those forces which is acting with,

any body of the regular forces shall have the like such powers as a member of the regular forces of corresponding rank ; and for the purposes of sections thirty-three and seventy-four of this Act any such member of the said naval or air forces shall be treated as if he were a member of the regular forces of corresponding rank.

PART V  
—cont.

*Attachment to naval or air forces*

**179.**—(1) An officer, warrant officer, non-commissioned officer or soldier of the regular forces may be attached temporarily to any of Her Majesty's naval or air forces.

Attachment of members of military forces to naval or air forces.

(2) Regulations made by the appropriate service authorities may prescribe circumstances in which officers, warrant officers, non-commissioned officers and soldiers of the regular forces shall be deemed to be attached to any of Her Majesty's naval or air forces, as the case may be, under the last foregoing subsection.

(3) In this section the expression "appropriate service authorities" means—

(a) in relation to attachment to any of Her Majesty's naval forces, the Admiralty and the Army Council,

(b) in relation to attachment to any of Her Majesty's air forces, the Army Council and the Air Council.

(4) A person shall not cease to be subject to military law by reason only of attachment in pursuance of this section.

*Redress of complaints*

**180.**—(1) If an officer thinks himself wronged in any matter by a superior officer or authority and on application to his commanding officer does not obtain the redress to which he thinks he is entitled, he may make a complaint with respect to that matter to the Army Council.

Complaints by officers.

(2) On receiving any such complaint it shall be the duty of the Army Council to investigate the complaint and to grant any redress which appears to them to be necessary or, if the complainant so requires, the Army Council shall through the Secretary of State make their report on the complaint to Her Majesty in order to receive the directions of Her Majesty thereon.

**181.**—(1) If a warrant officer, non-commissioned officer or soldier thinks himself wronged in any matter by any officer other than his commanding officer or by any warrant officer, non-commissioned officer or soldier, he may make a complaint with respect to that matter to his commanding officer.

Complaints by warrant officers, non-commissioned officers and soldiers.



**PART V**  
—cont.

(2) If a warrant officer, non-commissioned officer or soldier thinks himself wronged in any matter by his commanding officer, either by reason of redress not being given to his satisfaction on a complaint under the last foregoing subsection or for any other reason, he may make a complaint with respect thereto to any military, naval or air-force officer under whom the complainant is for the time being serving, being an officer not below the rank of brigadier or corresponding rank.

(3) It shall be the duty of a commanding or other officer to have any complaint received by him under this section investigated and to take any steps for redressing the matter complained of which appear to him to be necessary.

*Exemptions for members of regular forces*

Officers on  
active list not  
to be sheriffs.

**182.** An officer of the regular forces on the active list (as defined by Royal Warrant) shall not be capable of being nominated or elected to be sheriff of any county, borough, or other place.

Exemption  
from jury  
service.

**183.** A warrant officer, non-commissioned officer or soldier of the regular forces shall be exempt from serving on any jury.

Exemptions  
from tolls, etc.

**184.**—(1) Duties or tolls for embarking from or disembarking on any pier, wharf, quay or landing place in the United Kingdom or any colony, or for passing over any road or bridge in the United Kingdom or any colony, shall not be payable in respect of—

- (a) members of the regular forces on duty ;
- (b) vehicles in military service, being vehicles belonging to the Crown or other vehicles driven by persons (whether members of Her Majesty's forces or not) in the service of the Crown ;
- (c) goods carried in such vehicles ;
- (d) horses or other animals in military service.

(2) In the last foregoing subsection the expression “ in military service ” means employed under proper military authority for the purposes of any body of the regular forces or accompanying any body of the regular forces.

(3) Members of the regular forces on duty when using ferries in Scotland shall be entitled to be carried at half rate.

Exemption  
from taking  
in execution  
of property  
used for  
military  
purposes.

**185.** No judgment or order given or made against a member of any of Her Majesty's military forces by any court in the United Kingdom or a colony shall be enforced by the levying of execution on any property of the person against whom it is given or made, being arms, ammunition, equipment, instruments or clothing used by him for military purposes.

*Provisions relating to deserters and absentees without leave*PART V  
—cont.

**186.**—(1) A constable may arrest any person whom he has reasonable cause to suspect of being an officer, warrant officer, non-commissioned officer or soldier of the regular forces who has deserted or is absent without leave.

Arrest  
of deserters and  
absentees  
without leave.

(2) Where no constable is available, any officer, warrant officer, non-commissioned officer or soldier of the regular forces, or any other person, may arrest any person whom he has reasonable cause to suspect as aforesaid.

(3) Any person having authority to issue a warrant for the arrest of a person charged with crime, if satisfied by evidence on oath that there is, or is reasonably suspected of being, within his jurisdiction an officer, warrant officer, non-commissioned officer or soldier of the regular forces who has deserted or is absent without leave or is reasonably suspected of having deserted or of being absent without leave, may issue a warrant authorising his arrest.

(4) Any person in custody in pursuance of this section shall as soon as practicable be brought before a court of summary jurisdiction.

(5) This section shall have effect in the United Kingdom and in any colony.

**187.**—(1) Where a person who is brought before a court of summary jurisdiction is alleged to be an officer, warrant officer, non-commissioned officer or soldier of the regular forces who has deserted or is absent without leave, the following provisions shall have effect.

Proceedings  
before a civil  
court where  
persons  
suspected of  
illegal absence.

(2) If he admits that he is illegally absent from the regular forces and the court is satisfied of the truth of the admission, then—

(a) unless he is in custody for some other cause the court shall, and

(b) notwithstanding that he is in custody for some other cause, the court may,

forthwith either cause him to be delivered into military custody in such manner as the court may think fit or commit him to some prison, police station or other place provided for the confinement of persons in custody, to be kept there for such reasonable time as the court may specify (not exceeding such time as appears to the court reasonably necessary for the purpose of enabling him to be delivered into military custody) or until sooner delivered into such custody.

Any time specified by the court may be extended by the court from time to time if it appears to the court reasonably necessary so to do for the purpose aforesaid.

(3) If he does not admit that he is illegally absent as aforesaid, or the court is not satisfied of the truth of the admission, the

PART V  
—cont.

court shall consider the evidence and any statement of the accused, and if satisfied that he is subject to military law and if of opinion that there is sufficient evidence to justify his being tried under this Act for an offence of desertion or absence without leave then, unless he is in custody for some other cause, the court shall cause him to be delivered into military custody or commit him as aforesaid, but otherwise shall discharge him:

Provided that if he is in custody for some other cause the court shall have power, but shall not be required, to act in accordance with this subsection.

(4) The following provisions of the Magistrates' Courts Act, 1952, or any corresponding enactment in force as respects the court in question, that is to say the provisions relating to the constitution and procedure of courts of summary jurisdiction acting as examining justices and conferring powers of adjournment and remand on such courts so acting, and the provisions as to evidence and the issue and enforcement of summonses or warrants to secure the attendance of witnesses, shall apply to any proceedings under this section.

(5) This section shall have effect in the United Kingdom and in any colony.

Deserters and  
absentees  
without leave  
surrendering  
to police.

**188.**—(1) Where in the United Kingdom or any colony a person surrenders himself to a constable as being illegally absent from the regular forces, the constable shall (unless he surrenders himself at a police station) bring him to a police station.

(2) The officer of police in charge of a police station at which a person has surrendered himself as aforesaid, or to which a person who has so surrendered himself is brought, shall forthwith inquire into the case, and if it appears to that officer that the said person is illegally absent as aforesaid he may cause him to be delivered into military custody without bringing him before a court of summary jurisdiction or may bring him before such a court.

Certificates of  
arrest or  
surrender of  
deserters and  
absentees.

**189.**—(1) Where a court of summary jurisdiction in pursuance of section one hundred and eighty-seven of this Act deals with a person as illegally absent, then when that person is delivered into military custody there shall be handed over with him a certificate in the prescribed form, signed by a justice of the peace, containing the prescribed particulars as to his arrest or surrender and the proceedings before the court; and for any such certificate there shall be payable to the clerk of the court, by such person as the Army Council may direct, such fee (if any) as may be prescribed.

(2) Where under the last foregoing section a person is delivered into military custody without being brought before a court, there shall be handed over with him a certificate in the

prescribed form, signed by the officer of police who causes him to be delivered into military custody, containing the prescribed particulars relating to his surrender.

PART V  
— *cont.*

(3) In any proceedings for an offence under section thirty-seven or thirty-eight of this Act—

(a) a document purporting to be a certificate under either of the two last foregoing subsections and to be signed as thereby required, shall be evidence of the matters stated in the document;

(b) where the proceedings are against a person who has been taken into military, naval or air-force custody on arrest or surrender, a certificate purporting to be signed by a provost officer, or any corresponding officer of a Commonwealth force or a force raised under the law of a colony, or by any other officer in charge of the guardroom or other place where that person was confined on being taken into custody, stating the fact, date, time and place of arrest or surrender shall be evidence of the matters stated in the certificate.

(4) In this section the expression “prescribed” means prescribed by regulations made by a Secretary of State by statutory instrument.

**190.**—(1) It shall be the duty of the governor of a civil prison in the United Kingdom or of the superintendent or other person in charge of a civil prison in a colony to receive any person duly committed to that prison by a court of summary jurisdiction as illegally absent from the regular forces and to detain him until in accordance with the directions of the court he is delivered into military custody. Duties of governors of prisons and others to receive deserters and absentees.

(2) The last foregoing subsection shall apply to the person having charge of any police station or other place (not being a prison) provided for the confinement of persons in custody, whether in the United Kingdom or in a colony, as it applies to the governor or superintendent of a prison.

#### *Offences relating to military matters punishable by civil courts*

**191.** Any person who in the United Kingdom or any colony falsely represents himself to any military, naval, air-force or civil authority to be a deserter from the regular forces shall be liable on summary conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months or to both such a fine and such imprisonment. Punishment for pretending to be a deserter.

**192.**—(1) Any person who, whether within or without Her Majesty’s dominions,— Punishment for procuring and assisting desertion.

(a) procures or persuades any officer, warrant officer, non-commissioned officer or soldier of the regular forces to desert or to absent himself without leave; or

PART V  
—cont.

- (b) knowing that any such officer, warrant officer, non-commissioned officer or soldier is about to desert or absent himself without leave, assists him in so doing; or
- (c) knowing any person to be a deserter or absentee without leave from the regular forces, conceals him or assists him in concealing himself or assists in his rescue from custody,

shall be guilty of an offence against this section.

(2) Any person guilty of an offence against this section shall be liable on summary conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months, or to both such a fine and such imprisonment, or on conviction on indictment to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding two years or to both such a fine and such imprisonment.

Punishment  
for obstructing  
members of  
regular forces  
in execution  
of duty.

**193.** Any person who, in the United Kingdom or any colony, wilfully obstructs or otherwise interferes with any officer, warrant officer, non-commissioned officer or soldier of the regular forces acting in the execution of his duty shall be liable on summary conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months or to both such a fine and such imprisonment.

Punishment  
for aiding  
malingering.

**194.** Any person who, whether within or without Her Majesty's dominions,—

- (a) produces in an officer, warrant officer, non-commissioned officer or soldier of the regular forces any sickness or disability; or
- (b) supplies to or for him any drug or preparation calculated or likely to render him, or lead to the belief that he is, permanently or temporarily unfit for service,

with a view to enabling him to avoid military service, whether permanently or temporarily, shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months or to both such a fine and such imprisonment, or on conviction on indictment to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding two years or to both such a fine and such imprisonment.

Unlawful  
purchase, etc.  
of military  
stores.

**195.—(1)** Any person who, whether within or without Her Majesty's dominions, acquires any military stores or solicits or procures any person to dispose of any military stores, or acts for any person in the disposing of any military stores, shall be guilty of an offence against this section unless he proves either—

- (a) that he did not know, and could not reasonably be expected to know, that the chattels in question were military stores, or

- (b) that those chattels had (by the transaction with which he is charged or some earlier transaction) been disposed of by order or with the consent of the Army Council or of some person or authority who had, or whom he had reasonable cause to believe to have, power to give the order or consent, or
- (c) that those chattels had become the property of an officer who had retired or ceased to be an officer, or of a warrant officer, non-commissioned officer or soldier who had been discharged, or of the personal representatives of a person who had died.

(2) Any person guilty of an offence against this section shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months or to both such a fine and such imprisonment, or on conviction on indictment to a fine not exceeding five hundred pounds or imprisonment for a term not exceeding two years or to both such a fine and such imprisonment.

(3) A constable may arrest without warrant any person whom he has reasonable grounds for suspecting of having committed an offence against this section, and may seize any property which he has reasonable grounds for suspecting of having been the subject of the offence.

(4) Any person having authority to issue a warrant for the arrest of a person charged with crime may, if satisfied by evidence on oath that a person within his jurisdiction has, or is reasonably suspected of having, in his possession any property which has been the subject of an offence against this section, grant a warrant to search for such property as in the case of stolen goods; and any property suspected of having been the subject of such an offence which is found on such a search shall be seized by the officer charged with the execution of the warrant, and that officer shall bring the person in whose possession or keeping the property is found before a court of summary jurisdiction.

(5) In this section—

- the expression “acquire” means buy, take in exchange, take in pawn or otherwise receive (whether apart from this section the receiving is lawful or not);
- the expression “dispose” means sell, give in exchange, pledge or otherwise hand over (whether apart from this section the handing over is lawful or not);
- the expression “military stores” means any chattel of any description belonging to Her Majesty, which has been issued for use for military purposes or is held in store for the purpose of being so issued when required, and

PART V  
—cont.

includes any chattel which had belonged, and had been issued or held, as aforesaid at some past time.

(6) For the purposes of subsection (4) of this section property shall be deemed to be in the possession of a person if he has it under his control, and whether he has it for his own use or benefit or for the use or benefit of another.

Illegal  
dealings in  
documents  
relating to  
pay, pensions,  
mobilisation,  
etc.

**196.**—(1) Any person who—

- (a) as a pledge or a security for a debt, or
- (b) with a view to obtaining payment from the person entitled thereto of a debt due either to himself or to any other person,

receives, detains or has in his possession any official document issued in connection with the payment to any person of any pay, pension, allowance, gratuity or other payment payable in respect of his or any other person's military service shall be guilty of an offence against this section.

(2) Any person who has in his possession without lawful authority or excuse (the proof whereof shall lie on him) any such document as aforesaid, or any official document issued in connection with the mobilisation or demobilisation of any of Her Majesty's military forces or any member thereof, shall be guilty of an offence against this section.

(3) Any person guilty of an offence against this section shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months or to both such a fine and such imprisonment.

(4) For the purposes of this section a document shall be deemed to be in the possession of a person if he has it under his control and whether he has it for his own use or benefit or for the use or benefit of another.

(5) This section shall have effect in the United Kingdom and in any colony.

Unauthorised  
use of and  
dealing in  
decorations,  
etc.

**197.**—(1) Any person who, in the United Kingdom or in any colony,—

- (a) without authority uses or wears any military decoration, or any badge, wound stripe or emblem supplied or authorised by the Army Council, or
- (b) uses or wears any decoration, badge, wound stripe, or emblem so nearly resembling any military decoration, or any such badge, stripe or emblem as aforesaid, as to be calculated to deceive, or
- (c) falsely represents himself to be a person who is or has been entitled to use or wear any such decoration, badge, stripe or emblem as is mentioned in paragraph (a) of this subsection,



shall be guilty of an offence against this section :

PART V  
—*cont.*

Provided that nothing in this subsection shall prohibit the use or wearing of ordinary regimental badges or of brooches or ornaments representing them.

(2) Any person who purchases or takes in pawn any naval, military or air-force decoration awarded to any member of Her Majesty's military forces, or solicits or procures any person to sell or pledge any such decoration, or acts for any person in the sale or pledging thereof, shall be guilty of an offence against this section unless he proves that at the time of the alleged offence the person to whom the decoration was awarded was dead or had ceased to be a member of those forces.

(3) Any person guilty of an offence against this section shall be liable on summary conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months or to both such a fine and such imprisonment.

#### *Provisions as to evidence*

**198.**—(1) The following provisions shall have effect with respect to evidence in proceedings under this Act, whether before a court-martial, a civil court or otherwise.

General  
provisions as  
to evidence.

(2) A document purporting to be a copy of the attestation paper signed by any person and to be certified to be a true copy by a person stated in the certificate to have the custody of the attestation paper shall be evidence of the enlistment of the person attested.

(3) The attestation paper purporting to be signed by a person on his enlistment shall be evidence of his having given the answers to questions which he is therein recorded as having given.

(4) A letter, return or other document stating that any person—

- (a) was or was not serving at any specified time or during any specified period in any part of Her Majesty's forces or was discharged from any part of those forces at or before any specified time, or
- (b) held or did not hold at any specified time any specified rank or appointment in any of those forces, or had at or before any specified time been attached, posted or transferred to any part of those forces, or at any specified time or during any specified period was or was not serving or held or did not hold any rank or appointment in any particular country or place, or
- (c) was or was not at any specified time authorised to use or wear any decoration, badge, wound stripe or emblem,

PART V  
—cont.

shall, if purporting to be issued by or on behalf of the Army Council, the Admiralty or the Air Council, or by a person authorised by any of them, be evidence of the matters stated in the document.

(5) A record made in any service book or other document prescribed by Queen's Regulations for the purposes of this subsection, being a record made in pursuance of any Act or of Queen's Regulations, or otherwise in pursuance of military duty, and purporting to be signed by the commanding officer or by any person whose duty it was to make the record, shall be evidence of the facts stated therein; and a copy of a record (including the signature thereto) in one of the said service books, purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the book, shall be evidence of the record.

(6) A document purporting to be issued by order of the Army Council and to contain instructions or regulations given or made by the Army Council shall be evidence of the giving of the instructions or making of the regulations and of their contents.

(7) A certificate purporting to be issued by or on behalf of the Army Council, the Admiralty or the Air Council, or by a person authorised by any of them, and stating—

- (a) that a decoration of a description specified in or annexed to the certificate is a military, naval or air-force decoration, or
- (b) that a badge, wound stripe or emblem of a description specified in or annexed to the certificate is one supplied or authorised by the Army Council,

shall be evidence of the matters stated in the certificate.

(8) A certificate purporting to be signed by a person's commanding officer or any officer authorised by him to give the certificate, and stating the contents of, or of any part of, standing orders or other routine orders of a continuing nature made for—

- (a) any formation or unit or body of troops, or
- (b) any command or other area, garrison or place, or
- (c) any ship, train or aircraft,

shall in proceedings against the said person be evidence of the matters stated in the certificate.

(9) Any document which would be evidence in any proceedings under the Air Force Act, 1955, by virtue of section one hundred and ninety-eight of that Act shall in like manner, subject to the like conditions, and for the like purpose be evidence in the like proceedings under this Act.

**199.**—(1) Where a person subject to military law has been tried before a civil court (whether at the time of the trial he was subject to military law or not), a certificate signed by the

clerk of the court and stating all or any of the following matters,—

- (a) that the said person has been tried before the court for an offence specified in the certificate,
- (b) the result of the trial,
- (c) what judgment or order was given or made by the court,
- (d) that other offences specified in the certificate were taken into consideration at the trial,

shall for the purposes of this Act be evidence of the matters stated in the certificate.

(2) The clerk of the court shall, if required by the commanding officer of the person in question or any other officer, furnish a certificate under this section and shall be paid such fee as may be prescribed by regulations made by a Secretary of State.

(3) A document purporting to be a certificate under this section and to be signed by the clerk of the court shall, unless the contrary is shown, be deemed to be such a certificate.

(4) References in this section to the clerk of the court include references to his deputy and to any other person having the custody of the records of the court.

**200.**—(1) The original proceedings of a court-martial purporting to be signed by the president of the court and being in the custody of the Judge Advocate General or of any person having the lawful custody thereof shall be admissible in evidence on production from that custody. Evidence of proceedings of court-martial.

(2) A document purporting to be a copy of the original proceedings of a court-martial or any part thereof and to be certified by the Judge Advocate General or any person authorised by him, or by any other person having the lawful custody of the proceedings, to be a true copy shall be evidence of the contents of the proceedings or the part to which the document relates, as the case may be.

(3) This section applies to evidence given in any court, whether civil or criminal and whether in the United Kingdom or in any colony.

#### *Miscellaneous Provisions*

**201.**—(1) A warrant officer or non-commissioned officer of the regular forces shall not be reduced in rank except by sentence of a court-martial (whether under this Act, the Naval Discipline Act or the Air Force Act, 1955) or by order of the Army Council, or of an officer, not below the rank of brigadier, flag officer or air commodore, authorised by the Army Council to act for the purposes of this section. Restrictions on reduction in rank of warrant officers and non-commissioned officers.

(2) An authorisation under the last foregoing subsection may be given generally or subject to such limitations as may be specified by the Army Council.

**PART V**  
—*cont.*

(3) For the purposes of subsection (1) of this section reduction in rank does not include reversion from acting rank.

**Temporary reception in civil custody of persons under escort.**

**202.**—(1) Where a person is in military custody when charged with, or with a view to his being charged with, an offence against Part II of this Act, it shall be the duty of the governor, superintendent or other person in charge of a prison (not being a military prison), or of the person having charge of any police station or other place in which prisoners may be lawfully detained, upon delivery to him of a written order purporting to be signed by the commanding officer of the person in custody to receive him into his custody for a period not exceeding seven days.

(2) This section shall have effect in the United Kingdom and in any colony.

**Avoidance of assignment of or charge on military pay, pensions, etc.**

**203.**—(1) Every assignment of or charge on, and every agreement to assign or charge, any pay, military award, grant, pension or allowance payable to any person in respect of his or any other person's service in Her Majesty's military forces shall be void.

(2) Save as expressly provided by this Act, no order shall be made by any court the effect of which would be to restrain any person from receiving anything which by virtue of this section he is precluded from assigning and to direct payment thereof to another person.

(3) Nothing in this section shall prejudice any enactment providing for the payment of any sum to a bankrupt's trustee in bankruptcy for distribution among creditors.

(4) This section shall have effect in the United Kingdom and in any colony.

**Power of certain officers to take affidavits and declarations.**

**204.**—(1) An officer of the regular forces of a rank not below that of major (hereinafter referred to as an "authorised officer") may, at a place outside the United Kingdom, take affidavits and declarations from any of the following persons, that is to say, persons subject to military law and persons not so subject who are of any description specified in the Fifth Schedule to this Act.

(2) A document purporting to have subscribed thereto the signature of an authorised officer in testimony of an affidavit or declaration being taken before him in pursuance of this section and containing in the jurat or attestation a statement of the date on which and the place at which the affidavit or declaration was taken and of the full name and rank of that officer shall be admitted in evidence without proof of the signature being the signature of that officer or of the facts so stated.

## PART VI

## APPLICATION OF ACT AND SUPPLEMENTAL PROVISIONS

*Persons subject to military law*

**205.**—(1) The following persons are subject to military law:—

Persons  
subject to  
military law:  
general  
provisions.

- (a) every officer holding a land forces commission (within the meaning of any Order of Her Majesty for the time being regulating the granting of commissions) and for the time being employed, or recalled for employment, in Her Majesty's service in any capacity in which he can be required to be employed as the holder of his commission ;
- (b) every officer holding a land forces commission (within the meaning aforesaid) who for the time being is not employed, or not employed as mentioned in paragraph (a) of this subsection, but is liable (otherwise than in specified circumstances only) to be recalled to military service under Her Majesty ;
- (c) every officer, not subject to military law under the foregoing provisions of this section, who being the holder of a land forces commission (within the meaning aforesaid) is employed in Her Majesty's service in employment of which it is an express condition that while employed therein he is to be subject to military law ;
- (d) every officer, not subject to military law under the foregoing provisions of this section, who, with the approval of the Army Council given subject to an express condition that while in that employment he is to be subject to military law, is employed otherwise than in Her Majesty's service ;
- (e) every officer holding a commission in the Territorial Army who is on the active list (as defined by the regulations for the Territorial Army) or on the permanent staff of the Territorial Army, or, being in the Territorial Army reserve, is doing duty with any body of troops for the time being subject to military law or is ordered on any duty or service for which he is liable as an officer of that reserve ;
- (f) every warrant officer, non-commissioned officer and soldier of the regular forces ;
- (g) every warrant officer, non-commissioned officer and man of the army reserve when called out on permanent service or in aid of the civil power or when undergoing annual or other training (whether in pursuance of an obligation or not), or when otherwise employed in Her Majesty's service as mentioned in paragraph (c) of this subsection ;

PART VI  
—cont.

- (h) every warrant officer, non-commissioned officer and man of the Territorial Army when embodied or called out for home defence service, when undergoing training or attending drills or parades (whether in pursuance of an obligation or not), or when serving on the permanent staff of the Territorial Army ;
- (i) every person in receipt of a pension in respect of service in the regular forces, or of such service and other service, who is employed in Her Majesty's service as mentioned in paragraph (c) of this subsection ;
- (j) every person not otherwise subject to military law who is serving in any force raised by order of Her Majesty outside the United Kingdom and is under the command of an officer holding a land forces commission or a commission in the Territorial Army ;
- (k) every member of the Home Guard when on duty (as defined in the Home Guard Act, 1951) or during any period (as so defined) during which the platoon or other part of the Home Guard to which he belongs is mustered (as so defined).

(2) For the purposes of paragraph (d) of the last foregoing subsection a certificate of the Army Council that approval to a person's employment was given subject to the condition mentioned in that paragraph shall be conclusive evidence of the facts stated in the certificate.

(3) References in this section to an officer holding a commission include references to a person entitled to have a commission issued to him.

Persons  
subject to  
military law:  
Common-  
wealth forces.

**206.** Members of a naval, military or air force being a Commonwealth force are subject to military law to such extent, and subject to such adaptations and modifications, as may be provided by or under any enactment relating to the attachment of members of such forces.

Persons  
subject to  
military law:  
Colonial  
forces.

**207.**—(1) Subject to the provisions of this section, where any military force is raised under the law of a colony, any such law—

- (a) may make provision in relation to that force and the officers, warrant officers, non-commissioned officers and soldiers thereof so as to have effect as well when they are outside as when they are within the limits of the colony ;
- (b) may apply in relation to the force and the officers, warrant officers, non-commissioned officers and soldiers thereof all or any of the provisions of this Act, either with or without adaptations, modifications or exceptions.

(2) Where any military force raised under the law of a colony is serving with part of the regular forces, the army reserve or the Territorial Army, then in so far as the law of the colony does not provide for the government and discipline of the force and the members thereof this Act shall apply—

(a) to the officers thereof as it applies to officers holding land forces commissions, and

(b) to the warrant officers, non-commissioned officers and soldiers thereof as it applies to warrant officers, non-commissioned officers and soldiers of the regular forces,

but subject to such adaptations, modifications or exceptions as may be specified in the general orders of the officer, whether military, naval or air-force but not below the rank of colonel or corresponding rank, commanding the forces with which the force raised in the colony is serving.

(3) While any officer, warrant officer, non-commissioned officer or soldier belonging to a force raised under the law of a colony is attached to, doing duty with, or otherwise acting as part of or with any portion of the regular forces, the army reserve or the Territorial Army in the United Kingdom, the foregoing provisions of this section shall not apply in relation to him, but he shall be subject to military law by virtue of this subsection and this Act shall apply to him as if he were a member of the regular forces.

**208.** Where a member of any of Her Majesty's naval or air forces is attached to any part of the regular forces, the army reserve or the Territorial Army, he shall while so attached be subject to military law; and the provisions of the Sixth Schedule to this Act shall have effect as respects persons subject to military law by virtue of this section.

Persons subject to military law: attached members of naval and air forces.

**209.**—(1) Subject to the modifications hereinafter specified, where any body of the regular forces is on active service, Part II of this Act shall apply to any person who is employed in the service of that body of the forces or any part or member thereof, or accompanies the said body or any part thereof, and is not subject to military law, the Naval Discipline Act, or air-force law apart from this section or any corresponding provisions of that Act or the Air Force Act, 1955, as the said Part II applies to persons subject to military law.

Application of Act to civilians.

(2) Subject to the modifications hereinafter specified, Part II of this Act shall at all times apply to a person of any description specified in the Fifth Schedule to this Act who is within the limits of the command of any officer commanding a body of the regular forces outside the United Kingdom, and is not subject to military law, the Naval Discipline Act, or air-force law apart from this section or any corresponding provisions of that Act or the Air Force Act, 1955, as the said Part II applies to persons subject to military law:



PART VI  
—cont.

Provided that none of the provisions contained in sections twenty-four to sixty-nine of this Act shall apply to a person by virtue only of this subsection except subsection (3) of section twenty-nine, sections thirty-five and thirty-six, sections fifty-five to fifty-eight, and section sixty-eight so far as it relates to that subsection and those sections.

(3) The said modifications are the following :

- (a) the punishments which may be awarded by a court-martial shall include a fine, but shall not include any other punishment less than imprisonment ;
- (b) the punishment which may be awarded where a charge is dealt with summarily shall, in the case of any offence, be a fine not exceeding ten pounds, but no other punishment ;
- (c) the following provision shall have effect in substitution for subsections (2) to (4) of section seventy-four, that is to say that a person may be arrested by a provost officer, by any warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, or by order of any officer of the regular forces ;
- (d) where a charge is being dealt with summarily and it has been determined that the accused is guilty, a finding shall not be recorded until after the accused has been afforded an opportunity of electing to be tried by court-martial, and if the accused so elects a finding shall not be recorded but such steps shall be taken with a view to the charge being tried by court-martial as may be prescribed by Rules of Procedure ;
- (e) the provisions of this Act relating to the investigation of, and summary dealing with, offences shall save as otherwise expressly provided apply as they apply to officers and warrant officers ;
- (f) for the purposes of the provisions of this Act relating to the investigation of offences, the commanding officer shall be such officer as may be determined by or under regulations of the Army Council made for the purposes of this section ;
- (g) for references in sections one hundred and thirty-one and one hundred and thirty-two of this Act to being, continuing, or ceasing to be subject to military law there shall be substituted references to being, continuing to be or ceasing to be in such circumstances that the said Part II applies, and subsection (3) of the said section one hundred and thirty-one shall not apply.

(4) Any fine awarded by virtue of this section, whether by a court-martial or the appropriate superior authority, shall be recoverable, in the United Kingdom or any colony, as a debt due to Her Majesty.

*Application of Act to particular corps and forces*

## PART VI

—cont.

**210.**—(1) The Royal Marines shall be a separate corps of the regular forces.

Provisions  
as to Royal  
Marines.

(2) In section two hundred and five of this Act—

(a) any reference to a land forces commission shall be construed as including a reference to a commission in the Royal Marines ;

(b) any reference to a non-commissioned officer or man of the army reserve called out on permanent service or undergoing annual or other training shall be construed as including a reference to a non-commissioned officer or marine of the Royal Marine Forces Volunteer Reserve, the Royal Fleet Reserve or the Royal Marine Emergency Reserve called into actual service or being trained or exercised.

(3) An officer, non-commissioned officer or marine of the Royal Marines, the Royal Marine Forces Volunteer Reserve, the Royal Fleet Reserve or the Royal Marine Emergency Reserve, shall continue subject to military law notwithstanding that he may for the time being be subject to the Naval Discipline Act.

(4) In relation to the Royal Marines and the officers, non-commissioned officers and marines thereof, and to officers, non-commissioned officers and marines of the Royal Marine Forces Volunteer Reserve, the Royal Fleet Reserve or the Royal Marine Emergency Reserve, this Act shall have effect subject to the modifications set out in Parts I and II of the Seventh Schedule thereto.

(5) The provisions of Part III of the Seventh Schedule to this Act shall have effect as respects transfers between the Royal Marines and other corps of the regular forces in substitution for the provisions of subsections (3) and (4) of section three of this Act.

**211.**—(1) Subject to the provisions of this section, references in Parts II to V of this Act to the regular forces shall include references to the following persons, that is to say—

Application  
of Act to  
reserve and  
auxiliary  
forces.

(a) officers of any reserve of officers while subject to military law, and officers who have retired (within the meaning of any Royal Warrant) but are for the time being subject to military law, and

(b) officers holding commissions in the Territorial Army while the part of the Territorial Army to which they belong is embodied or while they are called out for home defence service or are undergoing training, and

(c) warrant officers, non-commissioned officers and men of the army reserve and the Territorial Army while subject to military law ;

and references to officers, warrant officers, non-commissioned

PART VI  
—cont.

officers or soldiers, or to members or a body, of the regular forces or to illegal absence from those forces shall be construed accordingly.

(2) Subsections (1), (5) and (6) of section seventeen of this Act shall apply to warrant officers, non-commissioned officers and men of the army reserve and the Territorial Army as they apply to warrant officers, non-commissioned officers and soldiers of the regular forces.

(3) The power conferred by subsection (3) of section thirty-seven and subsection (3) of section eighty-one of this Act to direct the forfeiture of an offender's previous service shall not be exercisable in relation to warrant officers, non-commissioned officers or men of the army reserve or the Territorial Army.

(4) Paragraph (b) of subsection (2) of section thirty-seven, sections one hundred and fifty to one hundred and fifty-three of this Act and, except in so far as they may be applied by regulations made under the Army Reserve Act, 1950, or the Auxiliary Forces Act, 1953, the provisions of Part II of this Act relating to the award of stoppages and the provisions of sections one hundred and forty-four to one hundred and forty-nine of this Act, shall not apply—

- (a) to officers of any reserve of officers who are not in actual service,
- (b) to warrant officers, non-commissioned officers or men of the army reserve except when called out on permanent service, or
- (c) to officers, warrant officers, non-commissioned officers or men of the Territorial Army except when the part of the Territorial Army to which they belong is embodied or they are called out for home defence service.

(5) In the last foregoing subsection the expression "actual service", in relation to an officer of any reserve of officers, means that he is serving (otherwise than when undergoing training) with a body of the regular forces, or of the army reserve when called out on permanent service, or with a part of the Territorial Army which is embodied or called out for home defence service.

(6) The provisions of sections one hundred and eighty-two and one hundred and eighty-three of this Act shall not apply at any time to officers holding commissions in the Territorial Army or to warrant officers, non-commissioned officers or men of the Territorial Army; and the provisions of the said section one hundred and eighty-three shall not apply to a warrant officer, non-commissioned officer or man of the army reserve except when he is called out on permanent service.

(7) In the case of a non-commissioned officer or man of the Territorial Army found guilty of an offence by a court-martial or his commanding officer, Part II of this Act shall apply as if in the scale set out in subsection (2) of section seventy-two of

this Act immediately before paragraph (f) thereof there were inserted the following paragraph—

PART VI  
—cont.

“(eee) dismissal from the Territorial Army”,  
and as if the punishments specified in subsection (3) of section seventy-eight of this Act included dismissal from the Territorial Army:

Provided that if the commanding officer awards such dismissal he shall not award any other punishment.

(8) An officer of any reserve of officers, an officer holding a commission in the Territorial Army, or a warrant officer, non-commissioned officer or man of the army reserve or the Territorial Army may be attached temporarily to any of Her Majesty's naval or air forces whether or not he is subject to military law, but if not subject thereto shall not be so attached except with his consent.

**212.**—(1) Subject to the provisions of this section references in Parts II to V of this Act to the regular forces shall include references to members of the Home Guard while subject to military law. Provisions as to Home Guard.

(2) A person shall not be charged with an offence against section seventy of this Act if he is subject to military law by reason only of being a member of the Home Guard.

(3) The provisions of Part II of this Act relating to the award of stoppages, of Part III of this Act, and of sections one hundred and eighty-two and one hundred and eighty-three of this Act shall not apply to members of the Home Guard at any time.

(4) Section one hundred and eighty of this Act shall not apply to a person by reason only that he is serving on a commission in the Home Guard.

(5) Notwithstanding anything in regulations under section eighty-two of this Act, where by or under such regulations the functions of a commanding officer are conferred on an officer serving on a commission in the Home Guard, he shall not have power to deal with a charge summarily except during a period during which the platoon or other part of the Home Guard to which the accused belongs is mustered (as defined in the Home Guard Act, 1951).

(6) For the purposes of subsection (2) of section eighty-seven and subsection (2) of section eighty-eight of this Act, and of the proviso to subsection (3) of section ninety thereof, any period of service on a commission in the Home Guard shall be disregarded.

**213.** In relation to women members of the regular forces this Act shall have effect subject to the following modifications:— Modification of certain provisions in relation to women.

(a) so much of Part I of this Act as relates to service in, and transfer to, the reserve shall not apply;

(b) so much of Part II of this Act as provides for field punishment shall not apply; and

PART VI  
—cont.

- (c) references in sections one hundred and fifty and one hundred and fifty-one to a wife shall be construed as references to a husband.

*Application to different countries*

Application  
to Scotland.

**214.**—(1) The provisions of this section shall have effect for the purpose of the application of this Act to Scotland.

(2) For any reference to a county court there shall be substituted a reference to the sheriff; and the powers and duties conferred or imposed on a justice of the peace may be exercised or performed either by such justice or by the sheriff.

(3) References in subsection (2) of section one hundred and twenty-five and in subsection (1) of section one hundred and twenty-eight to the Capital Punishment Amendment Act, 1868, or to any provision of that Act shall respectively be construed as references to that Act as it applies to Scotland or to the corresponding provision of that Act applying to Scotland, and references in the said subsection (2) and subsection (1) to the sheriff shall be construed as references to the lord provost or provost, or magistrate or magistrates, charged with seeing the sentence of death carried into effect.

(4) In subsection (2) of section one hundred and twenty-eight for the reference to the Coroners Acts, 1887 to 1926 there shall be substituted a reference to section twenty-five of the Prisons (Scotland) Act, 1952, and that section as applied in relation to any such premises as are mentioned in the said subsection (2) shall have effect subject to the necessary modifications.

(5) For any reference to the Minister of Housing and Local Government there shall be substituted a reference to the Secretary of State; and the local authority for the purposes of Part IV of this Act shall be a county or town council.

(6) Section one hundred and eighty-seven shall have effect as if subsection (4) were omitted.

(7) Section one hundred and ninety-five shall have effect as if for the obligation imposed by subsection (4) on the officer therein mentioned to bring a person before a court of summary jurisdiction there were substituted an obligation to report to the procurator fiscal.

(8) The expression “putative father” in relation to an illegitimate child means the person proved or admitted to be the father; and the expression “chattel” means corporeal moveable.

Application  
to Northern  
Ireland.

**215.**—(1) The provisions of this section shall have effect for the purpose of the application of this Act to Northern Ireland.

(2) The expression “summary conviction” means conviction in accordance with the enactments (including enactments of the Parliament of Northern Ireland) for the time being in force in Northern Ireland relating to summary jurisdiction; and all fines

imposed in proceedings taken before a court of summary jurisdiction in Northern Ireland shall be dealt with in the manner provided by section twenty of the Administration of Justice Act (Northern Ireland), 1954.

(3) The jurisdiction and powers of the Secretary of State under this Act with respect to persons committed to or detained in prisons other than military prisons and other than air-force prisons as defined in the Air Force Act, 1955, and with respect to prisons other than as aforesaid, shall in Northern Ireland be exercisable only subject to the approval of the Ministry of Home Affairs for Northern Ireland.

(4) References in subsection (2) of section one hundred and twenty-five and in subsection (1) of section one hundred and twenty-eight to the Capital Punishment Amendment Act, 1868, or to any provision of that Act and to rules made under that Act shall respectively be construed as references to that Act or provision as in force from time to time in Northern Ireland and to any rules under that Act as in force in Northern Ireland, and, accordingly, references in the said subsections to the sheriff shall be construed as references to the under-sheriff.

(5) References in subsection (2) of section one hundred and twenty-eight to the Coroners Acts, 1887 to 1926, shall be construed as references to section thirty-nine of the Prison Act (Northern Ireland), 1953; and that section as applied in relation to any such premises as are mentioned in the said subsection (2) shall have effect subject to the necessary modifications.

(6) For the reference in subsection (5) of section one hundred and fifty to section four of the Bastardy Laws Amendment Act, 1872, there shall be substituted a reference to section one of the Illegitimate Children (Affiliation Orders) Act (Northern Ireland), 1924.

(7) In Part IV of this Act references to a local authority shall be construed as references to a welfare authority, references to the Minister of Housing and Local Government shall be construed as references to the Minister of Home Affairs for Northern Ireland, and references to a chief officer of police shall be construed as references to a county inspector of the Royal Ulster Constabulary or any other officer having the rank of a county inspector thereof.

(8) For the reference in section one hundred and seventy-three to section thirty-five of the Road Traffic Act, 1930, there shall be substituted a reference to section six of the Motor Vehicles and Road Traffic Act (Northern Ireland), 1930.

(9) For the reference in subsection (4) of section one hundred and eighty-seven to the Magistrates' Courts Act, 1952, there shall be substituted a reference to the Summary Jurisdiction Acts (Northern Ireland) and the rules made thereunder.

PART VI  
—cont.

(10) For the reference in subsection (3) of section two hundred and three to a bankrupt's trustee in bankruptcy there shall be substituted a reference to an assignee in bankruptcy.

(11) In paragraphs 3 and 5 of the table set out in the Second Schedule to this Act for the words "the court under section four of the Guardianship of Infants Act, 1925," there shall be substituted the words "a court of competent jurisdiction".

Application  
to Channel  
Islands and  
Isle of Man.

**216.**—(1) This Act shall apply to the Channel Islands and the Isle of Man in accordance with the following provisions of this section.

(2) Subject as hereinafter provided, references except in Part IV of this Act to the United Kingdom shall be construed as including references to the Channel Islands and the Isle of Man.

(3) References in sections one hundred and nineteen, one hundred and twenty-six, one hundred and twenty-seven and one hundred and forty-three to the United Kingdom shall not include references to the Channel Islands or the Isle of Man, and references in the said section one hundred and twenty-seven to a colony shall include references to the Channel Islands and the Isle of Man.

(4) In relation to an order made by a court in the Isle of Man subsection (5) of section one hundred and fifty of this Act shall have effect with the substitution, for the reference to the Maintenance Orders (Facilities for Enforcement) Act, 1920, of a reference to an Act of Tynwald entitled the Maintenance Orders (Facilities for Enforcement) Act, 1921, and for the reference to section four of the Bastardy Laws Amendment Act, 1872, of a reference to section three of an Act of Tynwald entitled the Bastardy Act Amendment Act, 1924.

Application  
to certain  
overseas  
territories.

**217.**—(1) This Act shall apply in relation to any territory under Her Majesty's protection, and any territory for the time being administered by Her Majesty's Government in the United Kingdom under the trusteeship system of the United Nations, as it applies in relation to a colony; and accordingly references in this Act to Her Majesty's dominions shall be construed as including references to any such territory.

(2) References in this Act to the law of a colony shall include, in relation to two or more colonies under a central legislature, references to law made by that legislature.

Provisions as  
to Federation  
of Malaya.

**218.**—(1) References in this Act to Her Majesty's forces or the armed forces of the Crown shall include references to naval, military or air forces raised in the Federation of Malaya.

(2) References in this Act to Her Majesty's military forces shall include references to military forces raised in the Federation of Malaya.

(3) References in this Act to Her Majesty's service shall include references to the military service of the Federation of Malaya.



(4) References in this Act to Her Majesty's ships and aircraft shall respectively include references to ships and aircraft belonging to the Federation of Malaya.

PART VI  
—cont.

**219.** Notwithstanding anything in the Ireland Act, 1949, this Application Act shall apply in relation to the Republic of Ireland as it applies to Republic in relation to a foreign country and not as it applies in relation of Ireland. to any part of Her Majesty's dominions.

### *Supplemental provisions*

**220.**—(1) In the United Kingdom or any colony, a civil court of any description having jurisdiction in the place where an offender is for the time being shall have jurisdiction to try him for any offence to which this section applies which is triable by a court of that description notwithstanding that the offence was committed outside the jurisdiction of the court: Jurisdiction of courts.

Provided that such an offence committed in any part of the United Kingdom shall not be triable outside that part of the United Kingdom.

(2) The offences to which this section applies are offences against any of the following sections of this Act, that is to say, section nineteen, section one hundred and sixty-one, section one hundred and seventy-one, and sections one hundred and ninety-one to one hundred and ninety-seven; and references in this section to a part of the United Kingdom are references to England and Wales, Scotland or Northern Ireland.

**221.** Any sum paid to the Secretary of State in pursuance of section twenty-seven of the Justices of the Peace Act, 1949, in respect of a fine recovered under this Act shall be deemed to be Exchequer moneys within the meaning of that section and shall be paid by the Secretary of State into the Exchequer. Disposal of summary fines in England.

**222.** In the application of this Act to any colony, there shall, if the law of the colony so provides, be substituted for the amount of any fine specified in this Act, being a fine which may be imposed on summary conviction, such amount as may be provided by that law; and it shall be competent for the law of any colony to declare what amount of the local currency is to be treated for the purposes of this Act as equivalent to any amount of money specified in this Act. Provisions as to summary fines in Colonies.

**223.** Save as expressly provided by any rules or regulations under this Act, any order or determination required or authorised to be made under this Act by any military, naval or air-force officer or authority may be signified under the hand of any officer authorised in that behalf; and any instrument signifying such an order or determination and purporting to be signed by an officer stated therein to be so authorised shall unless the contrary is proved be deemed to be signed by an officer so authorised. Execution of orders, instruments, etc.

## PART VI

—cont.

Provisions  
as to active  
service.

**224.**—(1) In this Act the expression “on active service”, in relation to a force, means that it is engaged in operations against an enemy or is engaged in a foreign country in operations for the protection of life or property or (subject to the provisions of this section) is in military occupation of a foreign country, and in relation to a person means that he is serving in or with a force which is on active service.

(2) Where any of Her Majesty’s military forces is serving outside the United Kingdom, and it appears to the appropriate authority that, by reason of the imminence of active service or of the recent existence of active service, it is necessary for the public service that the force should be deemed to be on active service, the appropriate authority may declare that for such period, not exceeding three months, beginning with the coming into force of the declaration as may be specified therein that force shall be deemed to be on active service.

(3) Where it appears to the appropriate authority that it is necessary for the public service that the period specified in a declaration under the last foregoing subsection should be prolonged or, if previously prolonged under this subsection, should be further prolonged, the appropriate authority may declare that the said period shall be prolonged by such time, not exceeding three months, as may be specified in the declaration under this subsection.

(4) If at any time while any force—

(a) is on active service by reason only of being in military occupation of a foreign country ; or

(b) is deemed to be on active service by virtue of the foregoing provisions of this section,

it appears to the appropriate authority that there is no necessity for the force to continue to be treated as being on active service, the appropriate authority may declare that as from the coming into operation of the declaration the force shall cease to be, or to be deemed to be, on active service.

(5) Before any declaration is made under this section, the appropriate authority shall, unless satisfied that it is not possible to communicate with sufficient speed with the Secretary of State, obtain the consent of the Secretary of State to the declaration ; and in any case where that consent has not been obtained before the making of a declaration under this section the appropriate authority shall report the making thereof to the Secretary of State with the utmost practicable speed.

(6) The Secretary of State may, if he thinks fit, direct that any declaration whereby any force is deemed to be, or to continue, on active service shall cease to have effect as from the coming into force of the direction ; but any direction under this subsection shall be without prejudice to anything done by virtue of the declaration before the coming into force of the direction.

(7) A declaration under this section shall have effect not only as respects the members of the force to which it relates but also as respects other persons the application to whom of any provisions of this Act depends on whether that force is on active service.

PART VI  
—cont.

(8) In this section the expression “the appropriate authority” means—

- (a) in relation to any force in a colony, the Governor of the colony;
- (b) in relation to any force not in a colony, the general officer or brigadier commanding the force, so however that where the force is under the command of a flag officer or air officer that officer shall be the appropriate authority.

(9) Any declaration under this section made by the Governor of a colony shall be made by proclamation published in the official Gazette of the colony.

(10) Any declaration or direction under this section shall come into operation on being published in general orders.

**225.**—(1) In this Act:—

General  
provisions  
as to  
interpretation.

“acting rank” means rank of any description (however called) such that under Queen’s Regulations a commanding officer has power to order the holder to revert from that rank, “acting warrant officer” and “acting non-commissioned officer” shall be construed accordingly, and references to acting non-commissioned officers shall be construed as including references to lance-corporals and lance-bombardiers;

“active service” shall be construed in accordance with the last foregoing section;

“aircraft” means any machine for flying, whether propelled by mechanical means or not, and includes any description of balloon;

“aircraft material” includes—

(a) parts of, and components of or accessories for, aircraft, whether for the time being in aircraft or not;

(b) engines, armaments, ammunition and bombs and other missiles of any description in, or for use in, aircraft;

(c) any other gear, apparatus or instruments in, or for use in, aircraft;

(d) any apparatus used in connection with the taking-off or landing of aircraft or for detecting the movement of aircraft; and

(e) any fuel used for the propulsion of aircraft and any material used as a lubricant for aircraft or aircraft material;

**PART VI**  
**—cont.**

- “appropriate superior authority” has the meaning assigned to it by subsection (1) of section seventy-seven and subsection (2) of section eighty-two of this Act ;
- “arrest” includes open arrest ;
- “before the enemy”, in relation to a person, means that he is in action against the enemy or about to go into action against the enemy, or is under attack or threat of imminent attack by the enemy ;
- “civil court” means a court of ordinary criminal jurisdiction but does not, except where otherwise expressly provided, include any such court outside Her Majesty’s dominions ;
- “civil offence” has the meaning assigned to it by subsection (2) of section seventy of this Act ;
- “commanding officer” has the meaning assigned to it by subsection (1) of section eighty-two of this Act ;
- “Commonwealth force” means any of the naval, military or air forces of Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa, India, Pakistan or Ceylon ;
- “constable” includes any person (whether within or outside the United Kingdom) having powers corresponding with those of a constable ;
- “corps” means any such body of the regular forces as may from time to time be declared by warrant of Her Majesty to be a corps for the purposes of this Act ;
- “corresponding civil offence” has the meaning assigned to it by subsection (2) of section seventy of this Act ;
- “corresponding rank,” in relation to any rank or rating of any of Her Majesty’s naval, military or air forces, means such rank or rating of any other of those forces as may be declared by Queen’s Regulations to correspond therewith ;
- “court-martial,” except where it is otherwise expressly provided, means a court-martial under this Act ;
- “damage” includes destruction, and references to damaging shall be construed accordingly ;
- “decoration” includes medal, medal ribbon, clasp and good-conduct badge ;
- “desertion” shall be construed in accordance with subsection (2) of section thirty-seven of this Act ;
- “enemy” includes all persons engaged in armed operations against any of Her Majesty’s forces, and also includes all armed mutineers, armed rebels, armed rioters and pirates ;
- “Governor” means, in relation to any colony, the officer, however styled, who is for the time being administer-

ing the government of the colony and includes the British Resident, Zanzibar, but where two or more colonies or the parts of any colony are under local governments and also under a central government, references to the Governor shall be construed as references to the officer, however styled, who is for the time being administering the central government;

“Her Majesty’s air forces”, “Her Majesty’s military forces” or “Her Majesty’s naval forces”, except where otherwise expressly provided, does not include any Commonwealth force;

except where the context otherwise requires “oath” includes affirmation, and references to swearing shall be construed accordingly;

“property” includes real property in England or Wales or Northern Ireland, heritable property in Scotland, and property outside the United Kingdom of the nature of real property;

“provost officer” means a provost marshal or officer appointed to exercise the functions conferred by or under this Act on provost officers and includes a naval provost marshal, an assistant to a naval provost marshal, and an officer appointed to exercise functions conferred by or under the Air Force Act, 1955, and corresponding with those of a provost officer under this Act;

“public property” means any property belonging to any department of Her Majesty’s Government in the United Kingdom or the Government of Northern Ireland or held for the purposes of any such department;

“Queen’s Regulations” means the Queen’s Regulations for the Army;

“regular forces” means any of Her Majesty’s military forces other than the army reserve, the Territorial Army and the Home Guard, and other than forces raised under the law of a colony, so however that an officer of any reserve of officers, or an officer who is retired within the meaning of any Royal Warrant, shall not be treated for the purposes of this Act as a member of the regular forces save in so far as is expressly provided by this Act;

“Royal Warrant” means the warrant or warrants of Her Majesty for the time being in force for regulating the pay and promotion of the army;

“Rules of Procedure” has the meaning assigned to it by section one hundred and three of this Act;

“service”, when used adjectivally, means belonging to or connected with Her Majesty’s military forces or any part of Her Majesty’s military forces;

PART VI  
—cont.

“service property” includes property belonging to any joint association or territorial army association within the meaning of the Auxiliary Forces Act, 1953, or to the Navy, Army and Air Force Institutes;

“ship” includes any description of vessel;

“steals” has the same meaning as in the Larceny Act, 1916;

“stoppages” means the recovery, by deductions from the pay of the offender, of a specified sum by way of compensation for any expense, loss or damage occasioned by the offence.

(2) References in this Act to warrant officers, non-commissioned officers or men of the army reserve being called out on permanent service are references to their being so called out whether in pursuance of a proclamation or not, but in Part I of this Act and subsection (2) of section one hundred and sixty-seven thereof do not include references to their being called out for overseas service otherwise than in pursuance of a proclamation.

(3) Any power conferred by this Act to make provision by regulations, rules or other instrument shall include power to make that provision for specified cases or classes of cases, and to make different provision for different classes of cases, and for the purposes of any such instrument classes of cases may be defined by reference to any circumstances specified in the instrument.

(4) Any power conferred by the foregoing provisions of this Act to make an order shall be construed as including power, exercisable in the like manner and subject to the like provisions, to vary or revoke the order.

**226.**—(1) This Act may be cited as the Army Act, 1955.

(2) This Act shall come into operation on such date as Her Majesty may by Order in Council appoint.

(3) This Act shall expire twelve months after the coming into operation thereof unless continued in accordance with the following provisions of this section.

(4) Her Majesty may from time to time by Order in Council provide that this Act shall continue in force for a period of twelve months beyond the date on which it would otherwise expire:

Provided that unless Parliament otherwise determines no Order in Council shall be made under this subsection so as to continue this Act beyond the expiration of five years from the date appointed under subsection (2) of this section.

(5) No recommendation shall be made to Her Majesty in Council to make an Order under the last foregoing subsection unless a draft thereof has been laid before Parliament and approved by resolution of each House of Parliament.

## SCHEDULES

## FIRST SCHEDULE

Sections 2, 18,  
23.

## PROCEDURE FOR ATTESTATION

1. The recruiting officer shall warn the person to be enlisted that if he makes any false answer to the questions to be read out to him he will be liable to be punished as provided by this Act.

2. He shall then read, or cause to be read, to that person the questions set out in the attestation paper and satisfy himself that he understands each of those questions and that his answers thereto have been duly recorded in the attestation paper.

3. He shall then ask that person to make and sign the declaration set out in the attestation paper as to the truth of the answers and shall administer to him the oath of allegiance as set out in the attestation paper.

4. Upon signing the declaration and taking the oath the said person shall become a soldier of the regular forces.

5. The recruiting officer shall by signature attest, in the manner required by the attestation paper, that the requirements of this Act as to the attestation of the recruit have been carried out and shall deliver the attestation paper duly dated to such person as may be prescribed by regulations of the Army Council.

6. When in accordance with such regulations the recruit is finally approved for service, the officer by whom he is approved shall at his request furnish him with a certified copy of the attestation paper.

## SECOND SCHEDULE

Sections 20, 215.

PERSONS ENTITLED TO OBJECT TO ENLISTMENT OF  
NATIONAL SERVICE MEN ON REGULAR ENGAGEMENT

An objection under subsection (3) of section twenty of this Act may be made, in any of the circumstances specified in the first column of the following table, by the person or either of the persons specified in relation thereto in the second column of that table.

TABLE

<i>Circumstances</i>	<i>Person or persons entitled to object</i>
1. Where the person enlisted is legitimate, and both his parents are living:	
(a) if his parents are living together;	Both parents.
(b) if his parents are divorced or separated by order of any court or by agreement;	The parent to whom the custody of the person enlisted is committed by order of the court or by the agreement, or, if the custody of the person enlisted is so committed to one parent during part of the year and to the other parent during the rest of the year, both parents.



2ND SCH.  
—*cont.*

<i>Circumstances</i>	<i>Person or persons entitled to object</i>
(c) if one parent has been deserted by the other;	The parent who has been deserted.
(d) if both parents have been deprived of custody of the person enlisted by order of the court.	The person to whose custody the person enlisted is committed by order of the court.
2. Where the person enlisted is legitimate, and one parent is dead:	
(a) if there is no guardian;	The surviving parent.
(b) if a guardian has been appointed by the deceased parent.	The surviving parent and the guardian (if acting) jointly, or the surviving parent or the guardian if the parent or guardian is the sole guardian of the person enlisted.
3. Where the person enlisted is legitimate, and both parents are dead.	The guardian or guardians appointed by the deceased parents or by the court under section four of the Guardianship of Infants Act, 1925.
4. Where the person enlisted is illegitimate, and his mother is alive.	The mother, or if she has by order of any court been deprived of the custody of the person enlisted, the person to whom the custody of the person enlisted has been committed by order of the court.
5. Where the person enlisted is illegitimate, and his mother is dead.	The guardian appointed by his mother or by the court under section four of the Guardianship of Infants Act, 1925.

## Section 98.

## THIRD SCHEDULE

ALTERNATIVE OFFENCES OF WHICH ACCUSED MAY BE  
CONVICTED BY COURT-MARTIAL

<i>Offence charged</i>	<i>Alternative offence</i>
1. Communicating with or giving intelligence to the enemy, either with intent to assist the enemy or without authority.	1. Disclosing information without authority.
2. Striking his superior officer.	2. (a) Using violence to his superior officer otherwise than by striking him. (b) Offering violence to his superior officer.
3. Using violence to his superior officer otherwise than by striking him.	3. Offering violence to his superior officer.

*Offence charged*

4. Using threatening language to his superior officer.

5. Disobeying, in such a manner as to show wilful defiance of authority, a lawful command given or sent to him personally.

6. Desertion.

7. Attempting to desert.

8. Stealing any property.

9. Any offence against section forty-four or forty-five of this Act involving wilfulness.

10. Any offence against subsection (1) of section fifty-four of this Act.

11. Any offence against section fifty-five of this Act involving striking.

12. Any offence against section fifty-five of this Act involving the use of violence other than striking.

*Alternative offence*

4. Using insubordinate language to his superior officer.

5. Disobeying a lawful command.

6. Absence without leave.

7. Absence without leave.

8. Fraudently misapplying the property.

9. The corresponding offence involving negligence.

10. Any offence against subsection (2) of section fifty-four of this Act.

11. (a) The corresponding offence involving the use of violence other than striking.

(b) The corresponding offence involving the offering of violence.

12. The corresponding offence involving the offering of violence.

## FOURTH SCHEDULE

Sections 168,  
172.SUPPLEMENTARY PROVISIONS AS TO PAYMENT FOR REQUISITIONED  
VEHICLES

1.—(1) Subject to the provisions of this Schedule, any payment under subsection (1) of section one hundred and sixty-eight of this Act shall (without prejudice to any agreement as to payment on account) become due on the expiration of the period for which possession of the vehicle in question is retained.

(2) Subject to the provisions of this Schedule, any payment under subsection (2) of section one hundred and sixty-eight of this Act shall become due on the furnishing of the vehicle.

(3) Any payment under paragraph (b) of subsection (3) of the said section one hundred and sixty-eight shall become due on the furnishing of the vehicle.

2.—(1) As soon as may be after the furnishing of a vehicle there shall be given or sent to the person by whom it was furnished, by such person and in such form and manner as may be specified by instructions of the Army Council, a receipt for the vehicle specifying what payment,

4TH SCH.  
—cont.

at what rate or of what amount, is offered in respect of the furnishing thereof under paragraph (a) of subsection (1), or as the case may be under subsection (2), of section one hundred and sixty-eight of this Act.

(2) As soon as may be after the end of the period for which possession of a vehicle is retained, there shall be given or sent to the person by whom the vehicle was furnished, by such person and in such form and manner as aforesaid, a notice stating whether any, and if so what, damage to the vehicle has occurred during the period for which possession of the vehicle was retained, other than damage which has been made good by a person acting on behalf of Her Majesty, or that the total loss of the vehicle has occurred, and specifying what payment is offered in respect of the damage or loss under paragraph (b) or (c) of subsection (1) of section one hundred and sixty-eight of this Act.

3.—(1) A person to whom a receipt or notice under the last foregoing paragraph has been given or sent (hereinafter referred to as “the claimant”) shall be deemed to have accepted the offer contained therein unless within three weeks from the time at which he received the receipt or notice he gives notice to the person by whom the receipt or notice was given or sent that he claims some specified greater amount or rate.

(2) Where a notice under the last foregoing paragraph has been given or sent stating that no damage has occurred to a vehicle during the period for which possession of the vehicle is retained, the claimant shall be deemed to have agreed that no damage has so occurred unless within three weeks from the time at which he received the notice he gives notice to the person by whom the notice was given or sent claiming that damage has so occurred and stating what payment he claims under subsection (1) of section one hundred and sixty-eight of this Act in respect of the damage.

(3) On the making of a claim under either of the two last foregoing sub-paragraphs the Army Council may notify the claimant either that they do not propose to make any further offer or that they make a specified further offer.

4.—(1) Subject to the provisions of the last foregoing paragraph and to the following provisions of this paragraph, a county court shall have jurisdiction to determine any dispute—

(a) as to the amount of any payment due under subsection (1) or (2) of section one hundred and sixty-eight of this Act, or whether any payment is due under any provision of the said subsection (1), or

(b) as to the amount of any payment due under paragraph (b) of subsection (3) of that section,

irrespective of the amount in dispute.

(2) An application to the county court for the determination of any such dispute as is mentioned in head (a) of the last foregoing sub-paragraph shall not be made before the expiration of three weeks from the making of the claim under sub-paragraph (1) or (2) of the last foregoing paragraph unless a notification has been given to the applicant

under sub-paragraph (3) of the last foregoing paragraph; and where such a notification contains a further offer by the Army Council, the person to whom it is given shall be deemed to have accepted the offer unless he makes such an application within three weeks from receipt of the notification.

4TH SCH.  
—cont.

5. The instructions of the Army Council referred to in paragraph 2 of this Schedule shall secure that any receipt or notice under that paragraph, or any notification under sub-paragraph (2) of the last foregoing paragraph, contains a statement of the effect of paragraph 3 of this Schedule or, as the case may be, of sub-paragraph (2) of the last foregoing paragraph.

6. In the foregoing provisions of this Schedule the expression "damage" does not include damage resulting in a total loss, or damage attributable to fair wear and tear.

7. Nothing in the foregoing provisions of this Schedule shall apply to a case falling within subsection (4) of section one hundred and sixty-eight or the proviso to subsection (2) of section one hundred and seventy-two of this Act, and any sum payable by virtue of that subsection or proviso shall become due on the making, by the person by whom the vehicle is required to be furnished, of a claim therefor to such authority as may have been specified in that behalf in the direction requiring the furnishing of the vehicle (or if no such authority was specified, to the Army Council):

Provided that before making any such payment the said authority or the Army Council, as the case may be, may require reasonable particulars of the damage in question and of the circumstances in which it occurred and may require a reasonable opportunity to be afforded to a person authorised by them to inspect the vehicle in question.

8. A county court shall have jurisdiction to deal with any claim arising under subsection (4) or subsection (5) of section one hundred and sixty-eight of this Act, or under the proviso to subsection (2) of section one hundred and seventy-two thereof, irrespective of the amount of the claim.

## FIFTH SCHEDULE

Sections 204,  
209.

### CIVILIANS OUTSIDE THE UNITED KINGDOM SUBJECT TO PART II WHEN NOT ON ACTIVE SERVICE

1. Persons serving Her Majesty, or otherwise employed, in such capacities connected with Her Majesty's naval, military or air forces as may be specified for the purposes of this Schedule by regulations of the Army Council, being persons serving or employed under Her Majesty's Government in the United Kingdom.

2. Persons who are employed by, or in the service of, any naval, military or air-force organisation so specified to which Her Majesty's Government in the United Kingdom is a party and are employed by or in the service of that organisation by reason of that Government being a party thereto.

3. Persons belonging to or employed by any other organisation so specified which operates in connection with Her Majesty's naval, military or air forces.

5TH SCH.  
—cont.

4. Persons who, for the purposes of their profession or employment, are attached to or accompany any of Her Majesty's naval, military or air forces in pursuance of an authorisation granted by or on behalf of the Admiralty, the Army Council or the Air Council.

5. Persons forming part of the family of members of any of Her Majesty's naval, military or air forces and residing with them or about to reside or departing after residing with them.

6. Persons forming part of the family of persons falling within paragraphs 1 to 4 of this Schedule and residing with them or about to reside or departing after residing with them.

7. Persons employed by members of any of Her Majesty's naval, military or air forces.

8. Persons employed by persons falling within paragraphs 1 to 6 of this Schedule.

9. Persons forming part of the family of persons falling within either of the last two foregoing paragraphs and residing with them or about to reside or departing after residing with them.

Section 208.

## SIXTH SCHEDULE

### APPLICATION OF MILITARY LAW TO ATTACHED MEMBERS OF NAVAL AND AIR FORCES

1.—(1) As respects the punishment of a person subject to military law by virtue of section two hundred and eight of this Act, the following adaptations shall have effect.

(2) References to forfeiture in the prescribed manner of seniority in the army or the corps to which the offender belongs shall be construed as references to forfeiture of seniority in his own service in such manner as may be prescribed by Rules of Procedure.

(3) In relation to members of any of Her Majesty's naval forces references to cashiering or discharge with ignominy shall be construed as references to dismissal with disgrace from Her Majesty's service, references to reduction to the ranks or any less reduction in rank shall be construed as references to disrating to an extent not greater than that which would have been authorised on conviction by a court-martial under the Naval Discipline Act, and paragraph (g) of subsection (2) of section seventy-two of this Act shall not apply.

2. For the purposes of the provisions of this Act relating to the constitution of courts-martial an officer subject to military law as aforesaid shall be treated as an officer belonging to Her Majesty's military forces of corresponding rank.

3. As respects the reconsideration of any sentence of a court-martial under this Act passed on a person subject to military law as aforesaid, the reference to the Army Council shall include a reference to his own Service Authority, and the functions of the authority required by those provisions to reconsider a sentence may be exercised by his own Service Authority.

4. As respects the review of a finding or award made on the summary disposal of a charge against a person subject to military law as aforesaid, references to the Army Council in the provisions of this Act relating to such reviews shall include references to his own Service Authority.

5. In proceedings under this Act against a person subject to military law as aforesaid any document which would have been evidence in the like proceedings under his own service law shall be evidence in like manner, subject to the like conditions and for the like purposes as in the first-mentioned proceedings.

6. In the application of this Act to a person subject to military law as aforesaid references to the regular forces shall include references to his own service, and references to any rank shall include references to the corresponding rank of his own service.

7. In relation to a person subject to military law as aforesaid subsection (3) of section one hundred and thirty-two of this Act shall have effect with the substitution for the period of three months therein mentioned of the period of three months next after the earliest date on which he is no longer subject either to military law or to his own service law.

8. In the application of sections one hundred and forty-four and one hundred and forty-nine of this Act to a person subject to military law as aforesaid references to a Royal Warrant shall include references to an Order in Council (if he is a member of any of Her Majesty's naval forces) or to an order under section two of the Air Force (Constitution) Act, 1917 (if he is a member of any of Her Majesty's air forces).

9. Sections one hundred and fifty to one hundred and fifty-two and one hundred and eighty of this Act shall not apply to a person subject to military law as aforesaid.

10. In this Schedule—

- (a) references to a person's own service shall be construed as references to the naval or air force to which he belongs,
- (b) references to a person's own service law shall be construed as references to the Naval Discipline Act or to air-force law, and
- (c) references to a person's own Service Authority shall be construed as references to the Admiralty or to the Air Council, according as he is a member of Her Majesty's naval forces or Her Majesty's air forces.

## SEVENTH SCHEDULE

Section 210.

### PROVISIONS AS TO ROYAL MARINES

#### PART I

#### ENLISTMENT, SERVICE AND DISCHARGE

1. The provisions of the four following paragraphs shall have effect in substitution for sections four to thirteen.

2.—(1) The terms for which persons may be enlisted to serve Her Majesty as men of the Royal Marines are the following.

7TH SCH.  
--cont.

(2) A person who has attained the age of eighteen years may be enlisted either—

(a) for such term not exceeding twelve years, beginning with the date of his attestation, as may be authorised by order of the Admiralty, being a term wholly of service in the Royal Marines; or

(b) for such term beginning as aforesaid, not exceeding twelve years, as may be so authorised, being a term consisting as to so much thereof as may be provided by order of the Admiralty of service in the Royal Marines and as to the residue of service in the Royal Fleet Reserve.

(3) A person who has not attained the age of eighteen years may be enlisted either—

(a) for a term consisting wholly of service in the Royal Marines beginning with the date of his attestation and ending with the expiration of such period, not exceeding twelve years, beginning with the date on which he attains the age of eighteen years as may be authorised by order of the Admiralty; or

(b) for a term ending with the expiration of such period as aforesaid and consisting, as to so much thereof as may be specified by order of the Admiralty, of service in the Royal Marines and, as to the residue thereof, of service in the Royal Fleet Reserve.

(4) A marine enlisted for a term consisting partly of service in the Royal Marines and partly of service in the Royal Fleet Reserve may at any time before the expiration of his service in the Royal Marines elect to continue serving therein for the remainder of the term of his engagement, and thereupon shall be treated as if that engagement had been for service in the Royal Marines for the whole term thereof.

(5) The foregoing provisions of this paragraph shall not apply to persons enlisted in pursuance of the National Service Act, 1948.

3.—(1) Any marine may, if approved by his commanding officer or other competent authority as a fit person to continue in Her Majesty's service as a marine, be re-engaged for any period authorised by order of the Admiralty:

Provided that the aggregate of the terms of the first and second engagements shall not exceed twenty-two years.

(2) A marine shall on his re-engagement make a declaration, in such form as may be provided by regulations of the Admiralty, before a naval officer commanding any ship commissioned by Her Majesty or before the commanding officer of any unit or detachment of Royal Marines.

4.—(1) The following provisions shall have effect as to the prolongation of service of a marine.

(2) If the period for which, under his first or second engagement, a marine is required to serve in the Royal Marines expires while he is serving on any foreign station, that period may be prolonged for such further time, not exceeding two years, as the commanding officer on the station may direct.



(3) A marine completing the period for which, under his second engagement, he is required to serve in the Royal Marines may give notice to his commanding officer that he wishes to continue in Her Majesty's service as a marine, and thereupon, if his commanding officer or other competent authority approves, he may be continued in such service, but may at any time terminate it by not less than three months' notice given by him to his commanding officer.

(4) Her Majesty may by proclamation call upon marines or any class of marines serving in the Royal Marines to extend the period for which they are required to serve therein for five years, and any marine to whom such a proclamation relates may be required to serve for a period of five years from the time at which he would otherwise be entitled to be discharged or (as the case may be) transferred to the Royal Fleet Reserve, if his services are so long required, and while a proclamation under this sub-paragraph is in force no direction shall be given under sub-paragraph (2) of this paragraph as respects any marine to whom the proclamation relates.

5.—(1) The following provisions shall have effect as to the discharge and transfer to the Royal Fleet Reserve of marines serving in the Royal Marines.

(2) Save as hereinafter provided, a marine, upon becoming entitled to be discharged or transferred, shall be discharged or transferred with all convenient speed, but until discharged or transferred shall be treated as if his period of service in the Royal Marines had not come to an end.

(3) Where at the time a marine is entitled to be discharged or transferred he is serving on a foreign station, then subject to the provisions of the next following sub-paragraph he shall be returned with all convenient speed to the United Kingdom and shall there be discharged or transferred.

(4) If at the time at which he is entitled to be discharged a marine is serving in any part of Her Majesty's dominions outside the United Kingdom, then if he so elects and obtains the consent of his commanding officer and, through his commanding officer, the consent of the proper authority of the country where he is, the last foregoing sub-paragraph shall not apply and he shall be discharged in that country and shall not afterwards have any claim to be sent to the United Kingdom or elsewhere.

(5) Where a marine who has, or is reasonably suspected of having, committed an offence under the Naval Discipline Act is entitled to be discharged or transferred at a time before he has been tried and punished for the offence, section one hundred and thirty-one shall with the necessary modifications apply in relation to the offence as if references therein to a court-martial and to military law included references to a naval court-martial and to the Naval Discipline Act.

(6) Except in pursuance of a sentence of a court-martial (whether under this Act, the Naval Discipline Act or the Air Force Act, 1955), a marine shall not be discharged unless his discharge has been authorised by order of an officer appointed by the Admiralty for the purposes of this sub-paragraph or by authority direct from the Admiralty; and in any case the discharge of a marine shall be carried out in accordance with the provisions in that behalf made by order of the Admiralty.

7TH SCH.  
—cont.

(7) Every marine shall on his discharge be given a certificate of discharge containing such particulars as may be prescribed by order of the Admiralty.

6. Subsections (1) and (2) of section three, sections fourteen and seventeen, and so much of Part II as relates to forfeiture of service, shall not apply to marines.

7. Section eighteen shall have effect, in relation to men of the Royal Marines, as if references to enlistment included references to re-engagement, and in relation to re-engagement references to the declaration mentioned in that section and to attestation or an attestation paper included references to the declaration required by sub-paragraph (2) of paragraph 3 of this Schedule.

8. References in section twenty to entry on a regular engagement shall be construed as references to being enlisted for any such term as is mentioned in head (a) or (b) of sub-paragraph (2) of paragraph 2 of this Schedule.

9. In the application of Part I of this Act to marines, for any reference to the minimum age for man's service there shall be substituted a reference to the age of seventeen years.

10. In this Part of this Schedule references to a marine include references to a non-commissioned officer.

## PART II

### MISCELLANEOUS ADAPTATIONS

11. In section forty the reference to the Army Council shall include a reference to the Admiralty.

12. Section seventy-two shall have effect as if in the scale set out in subsection (2) thereof there were inserted, after paragraph (k), the following paragraph:—

“(kk) forfeiture of good-conduct badges, either in addition to or in lieu of any other punishment.”

13. In the provisions of this Act relating to enlistment and attachment, references to the Admiralty shall be substituted for references to the Army Council.

14. In the provisions of this Act relating to the reconsideration of sentences the reference to the Army Council shall include a reference to the Admiralty, and the functions of the authority required by those provisions to reconsider a sentence may be exercised by the Admiralty.

15. In the provisions of this Act relating to the review of summary findings and awards references to the Army Council shall include references to the Admiralty.

16. In the provisions of this Act relating to confessions of desertion, to forfeitures of and deductions from pay, to evidence, and to the execution of orders and instruments, references to the Army Council and to a military authority shall include respectively references to the Admiralty and to a naval authority.

17. In the provisions of this Act relating to boards of inquiry and regimental inquiries references to the Army Council shall include references to the Admiralty.

18. In the provisions of this Act relating to forfeitures of and deductions from pay references to a Royal Warrant shall include references to an Order in Council; and in the provisions of this Act relating to compensation for loss occasioned by wrongful act or negligence the reference to the Army Council shall include a reference to the Admiralty.

19. Sections one hundred and fifty to one hundred and fifty-two shall not apply to officers, non-commissioned officers and men of the Royal Marines, the Royal Marine Forces Volunteer Reserve, the Royal Fleet Reserve or the Royal Marine Emergency Reserve.

20. The following shall be substituted for section one hundred and eighty:—

“If an officer thinks himself wronged in any matter by a superior officer or authority and on application to his commanding officer does not obtain the redress to which he thinks he is entitled he may make a complaint with respect to that matter to the Admiralty, and it shall be the duty of the Admiralty to enquire into the complaint and to grant any redress which appears to them to be necessary.”

21. In the provisions of this Act relating to reduction in rank of non-commissioned officers the references to the Army Council shall include references to the Admiralty.

22. In this Act the expression “the regular forces” does not include officers, non-commissioned officers, or marines of the Royal Marine Forces Volunteer Reserve, the Royal Fleet Reserve or the Royal Marine Emergency Reserve; but the provisions of section two hundred and eleven shall apply—

- (a) to such officers as they apply to officers of any reserve of officers,
- (b) to such non-commissioned officers and marines as they apply to non-commissioned officers and men of the army reserve.

### PART III

#### TRANSFERS

23. A non-commissioned officer or marine of the Royal Marines may, with his consent, at any time be transferred by joint order of the Admiralty and the Army Council to another corps of the regular forces; and a warrant officer, non-commissioned officer or soldier serving in a corps of the regular forces other than the Royal Marines may, with his consent, at any time be transferred by such an order to the Royal Marines.

24. Where a person is in pursuance of the last foregoing paragraph transferred to the Royal Marines, the Admiralty, and where a person is so transferred to another corps, the Army Council, may by order vary the conditions of his service so as to conform to such conditions of service in the corps to which he is transferred as correspond, as nearly as may be, with the conditions of his service immediately before the transfer.

*Table of Statutes referred to in this Act*

Short Title	Session and Chapter
Act of Settlement ... ..	12 & 13 Will. 3. c. 2.
Lunacy (Scotland) Act, 1862... ..	25 & 26 Vict. c. 54.
Naval Discipline Act ... ..	29 & 30 Vict. c. 109.
Capital Punishment Amendment Act, 1868...	31 & 32 Vict. c. 24.
Bastardy Laws Amendment Act, 1872 ... ..	35 & 36 Vict. c. 65.
Lunacy Act, 1890 ... ..	53 & 54 Vict. c. 5.
Larceny Act, 1916 ... ..	6 & 7 Geo. 5. c. 50.
Air Force (Constitution) Act, 1917 ... ..	7 & 8 Geo. 5. c. 51.
Maintenance Orders (Facilities for Enforcement) Act, 1920.	10 & 11 Geo. 5. c. 33.
Guardianship of Infants Act, 1925 ... ..	15 & 16 Geo. 5. c. 45.
Road Traffic Act, 1930 ... ..	20 & 21 Geo. 5. c. 43.
National Service Act, 1948 ... ..	11 & 12 Geo. 6. c. 64.
Ireland Act, 1949 ... ..	12, 13 & 14 Geo. 6. c. 41.
Justices of the Peace Act, 1949 ... ..	12, 13 & 14 Geo. 6. c. 101.
Army Reserve Act, 1950 ... ..	14 Geo. 6. c. 32.
Courts-Martial (Appeals) Act, 1951 ... ..	14 & 15 Geo. 6. c. 46.
Home Guard Act, 1951 ... ..	15 & 16 Geo. 6. & 1 Eliz. 2. c. 8.
Prisons Act, 1952 ... ..	15 & 16 Geo. 6. & 1 Eliz. 2. c. 52.
Magistrates' Courts Act, 1952 ... ..	15 & 16 Geo. 6. & 1 Eliz. 2. c. 55.
Prisons (Scotland) Act, 1952 ... ..	15 & 16 Geo. 6. & 1 Eliz. 2. c. 61.
Auxiliary Forces Act, 1953 ... ..	1 & 2 Eliz. 2. c. 50.

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